By Mr. REYNOLDS: Petition of sundry citizens of Pennsylvania, for a national highways commission and appropriation for Federal aid in building highways (H. R. 15837)—to the Committee on Agriculture.

By Mr. SPERRY: Resolution of the Connecticut State Board of Trade, favoring the bill for acquiring national forests in the Appalachian and White Mountains—to the Committee on Agriculture.

Also, protests of citizens of Hartford, New Haven, Derby, Seymour, New Britain, Bristol, and Middletown, Conn., against the Hepburn amendment to the Sherman antitrust law—to the Committee on the Judiciary.

Also, protest of the Birmingham National Bank, of Derby, Conn., against the Aldrich bill—to the Committee on Banking and Currency.

By Mr. WANGER: Petition of Philadelphia Bourse, against H. R. 17290, a bill to protect trade against unlawful restraints and monopolies—to the Committee on the Judiciary.

By Mr. WHEELER: Petitions of W. H. Deveraux and 33 others, of Wilcox, Pa., and Lewis P. Keoner, of St. Marys, Pa., in favor of passage of S. 3152, for additional protection to the dairy interests—to the Committee on Agriculture.

## SENATE.

### FRIDAY, *April 17, 1908.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of the proceedings of Wednesday last, when, on request of Mr. MCCREARY, and by unanimous consent, the further reading was dispended with.

#### FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of O. M. Davis, jr., administrator of C. L. Davis, deceased, *v.* United States, which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed a bill (H. R. 20471) making appropriations for the naval service for the fiscal year ending June 30, 1909, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the Speaker of the House had appointed Mr. TAWNEY a conferee on the part of the House upon the legislative, executive, and judicial appropriation bill in the place of Mr. Brick, deceased.

#### ENROLLED BILL SIGNED.

The message further announced that the Speaker of the House had signed the enrolled bill H. R. 17305, an act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia, and it was thereupon signed by the Vice-President.

#### PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented memorials of sundry organizations of Nebraska, Texas, Michigan, Pennsylvania, Missouri, Minnesota, California, New York, Ohio, District of Columbia, Iowa, Kentucky, Colorado, Massachusetts, New Jersey and Illinois, remonstrating against the enactment of legislation to prohibit the interstate transportation of intoxicating liquors, which were ordered to lie on the table.

Mr. PLATT presented a petition of Hillsdale Grange, No. 933, Patrons of Husbandry, of Hillsdale, N. Y., praying for the passage of the so-called "rural parcels-post bill," and also for the establishment of a national highways commission, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of S. N. Parks, of Oneonta, N. Y., praying for the enactment of legislation to restrict the immigration of Asiatics into the United States, which was referred to the Committtee on Immigration.

He also presented memorials of sundry citizens of New York City, Yonkers, and Buffalo, all in the State of New York, remonstrating against the ratification of the pending treaty of arbitration between the United States and Great Britain, which were referred to the Committee on Foreign Relations.

He also presented sundry petitions of citizens of Poughkeepsie, N. Y., praying for the adoption of a certain amendment to the so-called "Sherman antitrust law," relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. ANKENY presented a petition of the Chamber of Commerce of Spokane, Wash., praying for the enactment of legislation providing for the establishment of a Department of Mines, which was referred to the Committee on Mines and Mining.

He also presented a petition of Ewartsville Grange, No. 114, Patrons of Husbandry, of Pullman, Wash., and a petition of Mayview Grange, Patrons of Husbandry, of Mayview, Wash., praying for the establishment of a rural parcels post, which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of Ewartsville Grange, No. 114, Patrons of Husbandry, of Pullman, Wash., and a petition of Mayview Grange, Patrons of Husbandry, of Mayview, Wash., praying for passage of the so-called "postal savings-bank bill," which were ordered to lie on the table.

Mr. BRANDEGEE presented the memorial of E. J. Sheehan and sundry other citizens of New Haven, Conn., and a memorial of Local Division No. 1, Ancient Order of Hibernians, of Danbury, Conn., remonstrating against the ratification of the pending treaty of arbitration between the United States and Great Britain, which were referred to the Committee on Foreign Relations.

Mr. GALLINGER. I present sundry letters from citizens of various States, protesting against Sunday legislation as proposed in a bill now before the Committee on the District of Columbia.

I also present 608 telegrams on the same subject, having presented several hundred telegrams previously. I move that they all be referred to the Committee on the District of Columbia.

The motion was agreed to.

Mr. SCOTT. On the same subject as that on which the Senator from New Hampshire has just offered petitions, I present a few telegrams. I will state that I think I have received several hundred, if not a thousand, letters protesting against the passage of the Sunday bill. I move that the telegrams be referred to the Committee on the District of Columbia.

The motion was agreed to.

Mr. GALLINGER presented a petition of the East Washington Citizens' Association of the District of Columbia, praying for the enactment of legislation providing for the elimination of grade crossings in the city of Washington, D. C., which was referred to the Committee on the District of Columbia.

He also presented a petition of the Northeast Washington Citizens' Association of the District of Columbia, praying for the enactment of legislation providing for the extension to Union Station of the East Washington Heights Traction Railroad Company, which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of Woonsocket, R. I., praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which was referred to the Committee on the District of Columbia.

Mr. CULLOM presented memorials of sundry citizens of Illinois, New York, Massachusetts, New Jersey, and Pennsylvania, remonstrating against the atrocities practiced by the Russian Government upon the citizens of that Empire, which were referred to the Committee on Foreign Relations.

He also presented a petition of Local Union No. 750, United Mine Workers of America, of Dewey Station, Ill., and a petition of Local Union No. 125, Amalgamated Association of Street Railway Employees, of Belleville, Ill., praying for the adoption of certain amendments to the so-called "Sherman antitrust law," relating to labor organizations, which were referred to the Committee on the Judiciary.

Mr. HEMENWAY presented petitions of 675 citizens of Fort Wayne and South Whitney, in the State of Indiana, praying for the enactment of legislation to create a volunteer retired list in the War and Navy Departments for the surviving officers of the civil war, which were referred to the Committee on Military Affairs.

Mr. DICK presented a memorial of Local Union No. 245, United Mine Workers of America, of Barton, Ohio, remonstrating against the enactment of legislation to exclude periodicals from second-class mail privileges, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of Wyandot Grange, No. 549, Patrons of Husbandry, of Nevada, Ohio, praying for the passage of the so-called "rural parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of the Lake Seamen's Union of Cleveland, Ohio, remonstrating against the enactment of legislation to amend section 4463 of the Revised Statutes, relating to the complement of the crews of vessels, which was ordered to lie on the table.

He also presented a petition of Local Union No. 416, Cigar Makers' International Union of America, of Norwalk, Ohio, praying for the adoption of a certain amendment to the so-called "Sherman antitrust law," relating to labor organizations, which was referred to the Committee on the Judiciary.

He also presented petitions of Local Union No. 172, of East Liverpool; of Local Union No. 111, of Canton, and of Local Union No. 121, of Fostoria, all of the Musicians' Protective Union, in the State of Ohio, praying for the enactment of legislation to prohibit Navy and Marine bands from entering into competition with civilian bands, which were referred to the Committee on Naval Affairs.

Mr. KNOX (for Mr. PENROSE) presented petitions of 1,414 citizens of the State of Pennsylvania, praying for the enactment of legislation providing additional protection to the dairy interests of the country, which were referred to the Committee on Agriculture and Forestry.

Mr. KNOX presented a memorial of the board of directors of the Philadelphia Bourse, of Philadelphia, Pa., remonstrating against the enactment of legislation to amend an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," which was referred to the Committee on the Judiciary.

Mr. BULKELEY presented a petition of Colebrook Grange, No. 82, Patrons of Husbandry, of Colebrook, Conn., praying for the passage of the so-called "rural parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of Local Division No. 1, Ancient Order of Hibernians, of Danbury, Conn., and a memorial of the Emmet Club of New Haven, Conn., remonstrating against the ratification of the pending treaty of arbitration between the United States and Great Britain, which were referred to the Committee on Foreign Relations.

Mr. CURTIS presented a petition of Local Lodge No. 44, United Brotherhood of Leather Workers on Horse Goods, of Wichita, Kans., praying for the adoption of a certain amendment to the so-called "Sherman antitrust law," relating to labor organizations, which was referred to the Committee on the Judiciary.

He also presented a petition of the Central Labor Union of Wichita, Kans., praying for the enactment of legislation granting relief to those who are injured in mining disasters, which was referred to the Committee on Mines and Mining.

Mr. MONEY presented a joint resolution of the legislature of Mississippi, which was referred to the Committee on Pensions and ordered to be printed in the RECORD, as follows:

A joint resolution memorializing Members of Congress to pass a law appropriating cotton-tax fund now in the United States Treasury to pension ex-Confederate soldiers and their widows and orphans.

Whereas there has remained in the United States Treasury for a number of years a sum approximating $60,000,000 illegally collected as a tax on cotton produced and marketed in Southern States during the years 1865, 1866, 1867, and 1868; and

Whereas, after the passage of so many years, it becomes impossible to secure the return of this tax in an equalized manner to the greater number of those who paid this illegal tax; and

Whereas recognizing it is the wish and desire of the people of the Southern cotton-growing States who paid this tax and their descendants that this fund, now held by the United States Treasury, be paid out for the pensioning of old ex-Confederate soldiers, their widows and orphans, understandingly by this method would in a practicable way reach the class of people who bore this injustice: Therefore, be it

*Resolved by the senate (the house of representatives concurring)*, That the Congress of the United States is hereby respectfully memorialized and urged to pass a law authorizing and instructing the Treasurer of the United States to pay over this cotton-tax fund to the treasurers of the different Southern cotton-growing States in the proportion as each State contributed and paid this tax that constitutes this fund, for the purpose of distributing the same as pensions to the old Confederate soldiers as the legislatures of the different States may deem proper: Be it further

*Resolved*, That the Members of Congress from Mississippi are earnestly requested to take such steps as will aid in accomplishing this end.

Mr. HOPKINS presented a petition of the Columbia Damen Club, of Chicago, Ill., praying for the enactment of legislation to regulate the employment of child labor, which was ordered to lie on the table.

He also presented a memorial of Federal Labor Union, No. 1241, American Federation of Labor, of Carpentersville, Ill., remonstrating against the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented a memorial of the Robert Emmet Memorial Association, of Buffalo, N. Y., remonstrating against the ratification of the treaty of arbitration between the United States and Great Britain, which was referred to the Committee on Foreign Relations.

He also presented a petition of the Chicago Association of Commerce, of Chicago, Ill., praying for the enactment of legislation making the available balance of the funds for the improvement of the harbor at that city available for expenditure on existing improvements of the Chicago River, which was referred to the Committee on Commerce.

He also presented a petition of sundry volunteer officers of the civil war of Clay City, Ill., praying for the enactment of legislation to create a volunteer retired list in the War and Navy Departments for the surviving officers of the civil war, which was referred to the Committee on Military Affairs.

He also presented a petition of sundry citizens of the State of Illinois, praying for the enactment of legislation providing for the construction of at least one of the proposed new battle ships at one of the Government navy-yards, which was referred to the Committee on Naval Affairs.

He also presented a memorial of the Lake Seamen's Union, of Chicago, Ill., remonstrating against the enactment of legislation to amend section 4463 of the Revised Statutes relating to the complement of crews of vessels, which was ordered to lie on the table.

He also presented petitions of Local Union No. 1, Commercial Telegraphers' Union of America, of Chicago; of Local Union No. 125, Amalgamated Association of Street Railway Employees of America, of East St. Louis, and of Local Union No. 750, United Mine Workers of America, of Dewey Station, all in the State of Illinois, praying for the adoption of certain amendments to the so-called "Sherman antitrust law," relating to labor organizations, which were referred to the Committee on the Judiciary.

### DISTRICT OF COLUMBIA APPROPRIATION BILL.

Mr. GALLINGER. Mr. President, I notice in the RECORD that the Senator from Maine [Mr. HALE], on Wednesday last, said to the Senate that the District of Columbia appropriation bill would be reported to the Senate this morning.

I had hoped that the committee would be able to complete that bill, so as to report it this morning, but it has been found an impossible task. I wish now to say that on to-morrow the bill will be reported for the purpose of having it printed and considered as soon as possible thereafter.

### REPORTS OF COMMITTEES.

Mr. WETMORE, from the Committee on the Library, to whom was referred the bill (S. 643) for the erection of a monument to the memory of Gen. Patrick Edward Connor, reported it without amendment and submitted a report (No. 523) thereon.

Mr. du PONT, from the Committee on Military Affairs, to whom was referred the bill (S. 3919) granting an honorable discharge to Philip McCormick, submitted an adverse report (No. 524) thereon, which was agreed to, and the bill was postponed indefinitely.

Mr. CARTER, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 6484) to establish postal savings banks for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes, reported it with amendments and submitted a report (No. 525) thereon.

Mr. McCUMBER, from the Committee on Pensions, to whom were referred the following bills, reported them severally with amendments and submitted reports thereon:

A bill (H. R. 1062) granting an increase of pension to Charles C. Weaver (Report No. 526); and

A bill (H. R. 1991) granting an increase of pension to Jerry Murphy (Report No. 527).

Mr. SUTHERLAND, from the Committee on Indian Affairs, to whom was referred the bill (S. 5520) to authorize the allotment to J. Morris Cook of his proportionate share in any of the land of the Grande Ronde Reservation, formerly belonging to the Umpqua tribe of Indians, and for other purposes, submitted an adverse report (No. 528) thereon, which was agreed to, and the bill was postponed indefinitely.

Mr. BEVERIDGE, from the Committee on Territories, to whom was referred the bill (S. 5820) ratifying an act of the legislative assembly of the Territory of Arizona providing for the erection of a court-house and jail at Yuma, in Yuma County, Territory of Arizona, reported it with an amendment and submitted a report (No. 529) thereon.

He also, from the same committee, to whom was referred the bill (S. 5816) ratifying chapters 57 and 61 of the session laws of the twenty-third Arizona legislative assembly providing for the issuance of bonds by Mohave County to erect court-house and jail in said county, reported it without amendment and submitted a report (No. 530) thereon.

He also, from the same committee, to whom was referred the bill (S. 5818) ratifying an act of the Arizona legislature pro-

viding for the erection of a court-house at St. Johns, in Apache County, Ariz., reported it without amendment and submitted a report (No. 531) thereon.

FORT DOUGLAS MILITARY RESERVATION EASEMENT.

Mr. WARNER. I report back from the Committee on Military Affairs, without amendment, the bill (S. 6200) granting a perpetual easement and right of way to Salt Lake City, Utah, for the construction, operation, maintenance, repair, and renewal of a conduit and pipe line and valve houses upon and across the Fort Douglas Military Reservation, and I submit a report (No. 522) thereon. I call the attention of the Senator from Utah [Mr. SUTHERLAND] to the bill.

Mr. SUTHERLAND. The bill just reported is one of only local concern and it has the approval of the War Department. I ask for its immediate consideration.

Mr. SCOTT. I ask the Senator to state the object of the bill more fully, so that the Senate may understand what is contemplated by it.

Mr. SUTHERLAND. The bill simply grants a right of way across the Fort Douglas Military Reservation for the construction, operation, and maintenance of a pipe line and necessary valve houses in connection with it. The bill sufficiently guards, I think, the rights of the Government, and, as I have already stated, it has the approval of the War Department. I see no reason why it should not be passed.

The VICE-PRESIDENT. The Secretary will read the bill for the information of the Senate.

The Secretary read the bill.

Mr. CULBERSON. I should like to ask the Senator in charge of the bill a question. It seems to grant a perpetual easement to the municipality of Salt Lake City. Is there any reservation in the bill of a right to modify or amend the act?

Mr. SUTHERLAND. The bill gives the War Department entire control over the matter. If the Secretary will again read the latter part of the bill, the Senator from Texas will see how it is guarded.

Mr. CULBERSON. May I ask that the latter part of the bill be read?

The VICE-PRESIDENT. The Secretary will read as requested by the Senator from Texas.

The Secretary read as follows:

*Provided*, That the said conduit and pipe line must be at all times maintained entirely below the surface of the ground; that the ground must be at all times kept in such condition as will enable troops to pass over the same without hindrance; that no fences shall be constructed to prevent the passage of troops and that all work done upon the reservation in pursuance of this grant shall be to the satisfaction of the post commander and under such regulations as he may prescribe in the interest of good order and discipline, and that in case of the removal of the conduit or pipe line or any of the valve houses the ground shall be restored by the grantee to its original condition.

The VICE-PRESIDENT. Is there objection to the consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

LANDS IN WISCONSIN.

Mr. CLAPP. For the senior Senator from Wisconsin [Mr. LA FOLLETTE] I report favorably from the Committee on Indian Affairs the bill (S. 4723) authorizing the Secretary of the Interior to issue patents in fee to the Protestant Episcopal Church for certain lands in Wisconsin set apart for the use of the said church for missionary purposes among the Oneida Indians. I report the bill without amendment and submit a report (No. 521) thereon. It being a local measure, I ask unanimous consent for the present consideration of the bill.

The Secretary read the bill, and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. GALLINGER introduced a bill (S. 6667) to provide for the testing of electric meters in the District of Columbia, and for other purposes, which was read twice by its title and, with the accompanying papers, referred to the Committee on the District of Columbia.

Mr. BURKETT introduced a bill (S. 6668) to regulate commerce, which was read twice by its title and referred to the Committee on Interstate Commerce.

He also introduced a bill (S. 6669) granting a pension to Minerva Boyd, which was read twice by its title and referred to the Committee on Pensions.

Mr. DICK introduced a bill (S. 6670) for the relief of Joseph Shields, administrator of the estate of Herman Baernstein, deceased, which was read twice by its title and referred to the Committee on Claims.

Mr. ANKENY introduced a bill (S. 6671) granting an increase of pension to Jesse H. Hockett, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

Mr. GARY introduced a bill (S. 6672) for the relief of the heirs of W. D. McDowall, deceased, which was read twice by its title and referred to the Committee on Claims.

Mr. McCREARY introduced a bill (S. 6673) for the relief of John R. Martin, which was read twice by its title and referred to the Committee on Claims.

Mr. DAVIS introduced a bill (S. 6674) for the relief of the estate of Francis McLelland, deceased, which was read twice by its title and, with the accompanying paper, referred to the Committee on Claims.

Mr. OVERMAN introduced a bill (S. 6675) to correct the military record of Jacob Madison Pruitt, which was read twice by its title and, with the accompanying paper, referred to the Committee on Military Affairs.

He also introduced a bill (S. 6676) fixing the compensation of the clerk of the United States circuit and district courts for the western district of North Carolina, and for other purposes, which was read twice by its title and referred to the Committee on the Judiciary.

Mr. WETMORE introduced a bill (S. 6677) granting an increase of pension to Harding W. Stoddard, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. GAMBLE introduced a bill (S. 6678) granting an increase of pension to Benjamin Flahart, which was read twice by its title and referred to the Committee on Pensions.

Mr. SCOTT introduced a bill (S. 6679) granting a pension to H. H. Michael, which was read twice by its title and referred to the Committee on Pensions.

He also introduced a bill (S. 6680) granting an increase of pension to John A. Pattee, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. NELSON (for Mr. KITTREDGE) introduced a bill (S. 6681) granting an increase of pension to Samuel Campman, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. NIXON introduced a bill (S. 6682) to reimburse W. B. Graham, late postmaster at Ely, Nev., for money expended for clerical assistance, which was read twice by its title and, with the accompanying papers, referred to the Committee on Post-Offices and Post-Roads.

Mr. MONEY introduced a bill (S. 6683) to indemnify Clarke County, Miss., in the sum of $40,000 for the court-house, records, and other property destroyed by the Federal troops during the late civil war, which was read twice by its title and referred to the Committee on Claims.

Mr. BACON introduced a bill (S. 6684) for the relief of the Medical College of Georgia, of Augusta, Ga., which was read twice by its title and referred to the Committee on Claims.

Mr. CLAY introduced a bill (S. 6685) for the relief of the estate of Joseph Lippman, deceased, which was read twice by its title and, with the accompanying paper, referred to the Committee on Claims.

Mr. CLAPP introduced a bill (S. 6686) to provide for the completion of allotments to the members of the Choctaw and Chickasaw nations, and for other purposes, which was read twice by its title and, with the accompanying letter from the Secretary of the Interior, which was ordered to be printed, referred to the Committee on Indian Affairs.

Mr. KNOX (for Mr. PENROSE) introduced a bill (S. 6687) granting certain money to the International Exposition Company of New Mexico, which was read twice by its title and referred to the Select Committee on Industrial Expositions.

He also (for Mr. PENROSE) introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 6688) granting a pension to Belle Holcomb;

A bill (S. 6689) granting an increase of pension to Sarah M. Hiestand;

A bill (S. 6690) granting an increase of pension to David Keller;

A bill (S. 6691) granting an increase of pension to John M. Rhoads;

A bill (S. 6692) granting a pension to Frederick W. Ellsworth (with the accompanying papers); and

A bill (S. 6693) granting an increase of pension to Mary R. Greer (with the accompanying papers).

He also introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 6694) for the relief of F. H. Lane; and

A bill (S. 6695) for the relief of Edward McDevitt.

He also introduced a bill (S. 6696) granting an increase of pension to Henry C. Frazier, which was read twice by its title and referred to the Committee on Pensions.

Mr. CURTIS introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 6697) for the relief of William T. Grady; and

A bill (S. 6698) for the relief of Annie Catherine Mettier.

He also introduced a bill (S. 6699) granting a pension to Jacob C. Adams, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. STONE introduced a bill (S. 6700) for the relief of Arthur H. Barnes, which was read twice by its title and, with the accompanying paper, referred to the Committee on Claims.

Mr. McCUMBER introduced a bill (S. 6701) to provide for payment of interest on judgments rendered against the United States for money due on public work, which was read twice by its title and referred to the Committee on the Judiciary.

He also introduced a bill (S. 6702) for the relief of John W. Knight and others, which was read twice by its title and, with the accompanying papers, referred to the Committee on Claims.

Mr. CLAPP introduced a bill (S. 6703) granting an increase of pension to Susan Schell, which was read twice by its title and referred to the Committee on Pensions.

Mr. BEVERIDGE introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 6704) granting an increase of pension to John Worrell; and

A bill (S. 6705) granting an increase of pension to Charles M. Hatcher.

Mr. WARNER introduced a bill (S. 6706) providing for the transfer of certain names from the freedman roll to the roll of citizens by blood of the Choctaw and Chickasaw nations, which was read twice by its title and referred to the Committee on Indian Affairs.

### AMENDMENTS TO APPROPRIATION BILLS.

Mr. WETMORE submitted an amendment proposing to appropriate $120 to enable the Superintendent of the Capitol Building and Grounds to pay for the marble bracket in the Supreme Court room supporting the bust of Chief Justice Waite, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. LODGE submitted an amendment proposing to appropriate $1,827,529.35 to enable the Secretary of the Navy to purchase three new steam colliers of American registry, ready for service, having a cargo-carrying capacity of 7,200 tons dead weight each, etc., intended to be proposed by him to the naval appropriation bill, which was referred to the Committee on Naval Affairs and ordered to be printed.

Mr. DEPEW submitted an amendment providing that out of the sum of money hereafter annually paid to the State of New York pursuant to the provisions of the acts of Congress of July 2, 1862, August 30, 1870, and March 4, 1907, there shall hereafter be paid annually to the Mount Tabor Industrial and Manual Training School for Colored Youths the sum of $5,000, intended to be proposed by him to the agricultural appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

Mr. NELSON (for Mr. KITTREDGE) submitted an amendment authorizing the Secretary of the Interior to pay out of the appropriations heretofore made and applicable to Anton Rostad, of Vermilion, S. Dak., $80 due him under contract for erection of buildings at the Genoa Indian School, Nebraska, intended to be proposed by him to the general deficiency appropriation bill, which was ordered to be printed and, with the accompanying papers, referred to the Committee on Appropriations.

### AMENDMENT TO OMNIBUS CLAIMS BILL.

Mr. BACON submitted an amendment intended to be proposed by him to House bill 15372, known as the "omnibus claims bill," which was ordered to lie on the table and be printed.

### WITHDRAWAL OF PAPERS—MARY E. EDMONDSON.

On motion of Mr. du PONT, it was

*Ordered*, That Mary E. Edmondson have leave to withdraw from the files of the Senate the papers submitted by her in support of Senate bill 540, first session Sixtieth Congress, granting a pension to Mary E. Edmondson, said bill having been favorably acted upon by the Senate.

### PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. M. C. LATTA, one of his secretaries, announced that the President had on April 16, 1908, approved and signed the following act:

S. 24. An act to increase the efficiency of the personnel of the Revenue-Cutter Service.

### DAM ACROSS RAINY RIVER.

Mr. GALLINGER. I have been informed by the superintendent of the document room that there is a call for the veto message of the President of April 13, 1908, on the bill (H. R. 15444) to extend the time for the construction of a dam across Rainy River, and, at the request of the superintendent, I move that it be printed as a document.

The motion was agreed to.

### SETTLEMENT OF SAMOAN CLAIMS.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States, which was read and, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed:

*To the Senate and House of Representatives:*

I transmit a report by the Secretary of State concerning this Government's obligation to pay to the Government of Sweden the sum of $375, under the convention between the United States, Great Britain, and Germany, for the settlement of Samoan claims, which was signed at Washington, on November 7, 1899.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
*Washington, April 17, 1908.*

### HOUSE BILL REFERRED.

H. R. 20471. An act making appropriations for the naval service for the fiscal year ending June 30, 1909, and for other purposes, was read twice by its title and referred to the Committee on Naval Affairs.

### REGULATION OF INJUNCTIONS.

Mr. OVERMAN. I ask unanimous consent to call up the bill (S. 3732) regulating injunctions and the practice of the district and circuit courts of the United States.

The VICE-PRESIDENT. The bill will be read for the information of the Senate.

The SECRETARY. The Committee on the Judiciary proposes to strike out all after the enacting clause and to insert:

That no temporary or interlocutory injunction, or temporary restraining order, or decree suspending or restraining the enforcement, operation, or execution of any statute of any State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued or granted by any circuit or district court of the United States or by any judge or justice thereof upon the ground of unconstitutionality of the statute, unless the application for the same shall be presented to a circuit judge and shall be heard and determined, upon issue made and proof taken by affidavit or otherwise, by three judges, of whom two shall be circuit judges, and the third may be either a circuit or a district judge, and unless a majority of said three judges shall concur in granting such application. Whenever such application, as aforesaid, is presented to a circuit judge he shall immediately call to his assistance, to hear and determine the application, one circuit judge and one district judge or another circuit judge. Said application shall not be heard and determined until five days' notice of the hearing has been given to the governor and attorney-general of the State and such other persons as may be defendants in the suit: *Provided*, That if a majority of said judges are of the opinion, at the time notice of said hearing is given as aforesaid, that irreparable loss and damage would result to the applicant unless a temporary restraining order, pending the period of the required notice, is granted, a majority of said judges may grant such order, but the same shall only remain in force until the hearing and determination of the application, upon due notice, as aforesaid, has taken place. That an appeal may be taken directly to the Supreme Court of the United States from any order or decree granting or denying, after notice and hearing, a temporary or interlocutory injunction or restraining order in such case; and the hearing of such appeal shall take precedence over all other cases except those of a similar character and criminal cases.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole.

The VICE-PRESIDENT. The question is on agreeing to the amendment reported by the Committee on the Judiciary.

The amendment was agreed to.

Mr. HEYBURN. I would be pleased to hear from the Senator having the bill in charge the purpose of this proposed legislation, which is of quite wide significance.

Mr. OVERMAN. Mr. President, in certain States in the United States, to wit, in Alabama, North Carolina, Minnesota, and other States of the Union, a Federal judge enjoined in certain cases the officers of those States from enforcing the State statutes.

I myself, Mr. President, in the last Congress and also in this Congress, asserted that the right of injunction should be taken away from the district and circuit judges, where the State was a party, and in the rate cases especially, wherever the petition was to enjoin a State officer from enforcing the State statutes, I contended that Congress has a right to take away from Fed-

eral judges the power to issue temporary injunctions. We discussed the question for more than three months here. It was seriously doubted whether Congress had that power or not, and the Senate so decided that Congress did not have that power when it defeated the Bailey amendment.

Since the decision in the Minnesota case and in the North Carolina case many bills have been introduced in the Senate to correct the evil. Early in the session I myself introduced a bill which was more drastic than this, which provided that no injunction should be issued by any Federal judge to suspend any State statute or restrain any State officer from enforcing a State statute.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Carolina yield to the Senator from New Hampshire?

Mr. OVERMAN. Certainly.

Mr. GALLINGER. I simply wish to inquire of the Senator from North Carolina if this is a unanimous report from the Committee on the Judiciary?

Mr. OVERMAN. It is. I want to say that this substitute for Senate bill 3732 is a unanimous report from the committee. I wish to say that there were some bills more drastic than this, and of the bills one was introduced by the Senator from Georgia [Mr. BACON] and another by the late Senator from Florida, Mr. Bryan, and two by myself, and was referred to a subcommittee. The distinguished Senator from Minnesota [Mr. NELSON], who I think has no superior on this floor as a lawyer or as a statesman, prepared the substitute which was reported back to the full committee and unanimously agreed to.

This measure proposes that whenever a petition is presented the circuit judge before whom it is presented shall, before granting the injunction, call in one circuit judge and one district judge or another circuit court judge, making three judges who shall pass upon the question of the injunction.

We think, sir, that if this could be done it would allay much intense feeling in the States. As was said by Mr. Justice Harlan, in his dissenting opinion in the Minnesota case, we have come to a sad day when one subordinate Federal judge can enjoin the officer of a sovereign State from proceeding to enforce the laws of the State passed by the legislature of his own State, and thereby suspending for a time the laws of the State. In other words, in effect we thought under the eleventh amendment a State could not be sued, but the Supreme Court, in the Minnesota case, says a suit against the attorney-general of a State is not a suit against the State. That being so, there being great feeling among the people of the States by reason of the fact that one Federal judge has tied the hands of a sovereign State and enjoined in this manner the great officer who is charged with the enforcement of the laws of the State, causing almost a revolution, as it did in my State, and in order to allay this feeling, if this substitute is adopted and three judges have to pass upon the question of the constitutionality of a State statute and three great judges say that the statute is unconstitutional, the officers of the State will be less inclined to resist the orders and decrees of our Federal courts. The people and the courts of the State are more inclined to abide by the decision of three judges than they would of one subordinate inferior Federal judge who simply upon petition or upon a hearing should tie the hands of a State officer from proceeding with the enforcement of the laws of his sovereign State. This is a substitute for my bill, and while it does not go as far as I would like I hope the substitute will be adopted. Therefore we have submitted this substitute, believing that it will remedy this great evil to some extent.

Mr. BURKETT. Mr. President, I desire to offer an amendment as a substitute for the substitute reported by the committee.

The VICE-PRESIDENT. The amendment proposed by the Senator from Nebraska will be read.

The Secretary read as follows:

That section 720 of the Revised Statutes of the United States be amended so as to read as follows:

"SEC. 720. That the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. Nor shall a writ of injunction or a restraining order be granted by any court of the United States against officers of any State in executing State laws until upon the final hearing and determination of the cause by the court where such action was instituted."

Mr. NELSON. Mr. President, that amendment ought not to be adopted, because one part of it would absolutely prohibit the courts in any case from issuing any other than a final injunction. I can briefly explain it, if it needs any explanation. I do not think it does.

The object of the proposed legislation is simply to provide that when an application is made for the purpose of obtaining an interlocutory or temporary injunction or a temporary restraining order to restrain the officer of a State, like the governor or the attorney-general, from executing the laws of the State, such applications shall be heard and considered before three Federal judges, two of whom shall be circuit judges, and the third one may be either a district or circuit judge; and it requires two of the judges, or a majority of them, to concur in granting the injunction.

It further provides that, except in cases of irreparable damages or injury, there shall be five days' notice of hearing given. Then the bill further provides that an appeal shall lie directly to the Supreme Court from any order granting or denying such application.

The real material difference is that in cases of this kind so important as to restrain the execution of a State law by State officials applications for injunction ought to be considered and passed upon by three Federal judges. The same principle, I may say, was brought into our jurisprudence by the Senator from Pennsylvania [Mr. KNOX] when he was Attorney-General of the United States. Under the law commonly called the "expediting law" the noted Northern Securities case was tried. It was tried before three Federal judges, and an appeal was taken directly to the Supreme Court. In the amendatory interstate-commerce act that we passed in the last Congress we adopted the same principle in reference to judicial proceedings under that act. It is exactly the same principle that was inaugurated by the Senator from Pennsylvania in reference to the Northern Securities case that is applied in reference to what it is proposed to do in this case. I can see no objection to it. I think the Judiciary Committee were all agreed, practically, on the matter.

Mr. BURKETT. Mr. President, I want to say in reply to the Senator from Minnesota [Mr. NELSON] that I have not been entirely oblivious or uncertain as to the objections that would be raised to the substitute which I offer. It is in exact form of a bill which I introduced on this subject some time ago after a good deal of consideration and I will say after a good deal of conference and consultation with some very eminent lawyers of the country.

In my opinion it will reach in a constitutional and proper way a need, and do it in a better way than the measure which the committee has reported. If the Senators will make a comparison of the two bills, they will find that the bill the committee has reported in no wise changes the right of the court to issue injunctions, temporary or otherwise, or "hair-trigger" injunctions, as they have at times been denominated—that is, injunctions apparently without consideration. It only involves the machinery by which those temporary injunctions can be issued and, in my opinion, makes it so cumbersome that it will not be practical nor in the end very satisfactory.

Suppose, perchance, there were a certain judge who wanted to issue an injunction of that sort improperly, and I am not even insinuating that there would be; but if there were a judge who might be inclined to issue an injunction improperly or without sufficient reason, it would be possible for him to call to himself perhaps at least one judge, and together they would make two, or a majority, who could issue an injunction just as improperly as it is possible for a single judge to do. The judge before whom the matter is brought has the selecting of the other two judges to act with him under the provisions of the committee bill.

The amendment which I have offered in the way of a substitute does not prohibit courts from issuing an injunction after the merits of the case have been heard. It simply prohibits them from issuing temporary injunctions, or injunctions before a hearing of the case. Those of us who have had occasion in the past to look up the history of the cases that have reached the Supreme Court and those that are reported in the Federal Reporter as coming from the circuit court of appeals will find that in a great many of those cases the lower courts themselves, after the hearing of the merits of the case, have set aside the temporary injunction that they originally issued before they had given the case a hearing on its merits. Notwithstanding that fact, by reason of an appeal to the Supreme Court, that temporary injunction has followed the case clear through, and the matter has been tied up by reason of a wrong injunction, as determined and adjudged by the circuit court itself afterwards, after a hearing. There was a wrong judgment in a matter of temporary injunction issued before hearing, and to the great damage and detriment of the State, and, I presume, possibly to the chagrin of the court that first made the order.

The amendment which I have introduced simply provides that a court can not issue an injunction until after it has heard the case—that is, after a final hearing of the case in the court where it originated.

Now, to be sure, someone may say that that may result in a great injury being done. That question, I think, was discussed somewhat in the recent Minnesota case, where it was suggested that, if the courts did not have the right to issue preliminary injunctions, great injury would have been done. But, on the other hand, we must remember that in the cases where this preliminary injunction has been issued wrongfully great injury has been done to the other side of the case. The States and the people have suffered injustice and hardship.

I take this position in reference to this sort of legislation: I will say this is an important matter, and, in my opinion, Congress, sooner or later, must take hold of it and determine by legislation, if it can—and, in my opinion, it can—as to where the line of demarcation is between State and Federal authorities in this class of cases.

I remember the excitement which was precipitated a year ago by the decision in the North Carolina cases, and we all will recall that at that time there was a very strained condition between Federal and State authority. It apparently would have taken only a match thrown into the box of tinder to have exploded the whole thing. But, as I now recall, it was the good sense and good judgment of the railroad people themselves, in finally determining to conform to the law until the matter could be heard, that perhaps quieted things in that State and prevented any possibility of an outburst of something that might have been very detrimental, or at least very embarrassing, both to the Federal and State authorities.

In my opinion we have had illustrations enough of this thing in the past to show that there will come a time when Congress must, if it can, define the line of demarcation between Federal authority and State authority in this particular line of cases. I have never been one of those who have had any great fear of the conflict of Federal authority and State authority. In my opinion there is no conflict and what seems a conflict is only the inability to see just where the one ends and the other begins. I believe there is a strong line of demarcation. It does not make so much difference, in my opinion, to the State or to the Federal authority where that line of demarcation is, but it is very important and very essential, in my mind, that we should know where that line of demarcation is. State and Federal laws will easily and readily conform to it if it is definitely known. I find that it varies somewhat from the view point of the observer. When you look at it from one side it spells one thing; and when you look at it from another side it spells another thing. In my opinion we ought to say by legislation just where that line of demarcation is.

The eleventh amendment, that is in controversy, in all these cases was itself adopted because of a lawsuit. That lawsuit was where a man of one State sued another State in the Federal court. The jurisdiction of the Federal court was disputed and it took a constitutional amendment to make it certain.

The people who were most instrumental in passing the Constitution believed, as we will find if we read the Federalist and the debates upon the Constitution at that time, that no citizen of one State had the right to sue another State; yet it came up in a lawsuit, and the Supreme Court decided that such a citizen did have a right to sue another State.

The unanimity with which Congress and the people adopted the eleventh amendment must persuade us that the people construed the Constitution in its adoption to mean differently than what the court said it meant. But the lawsuit decided otherwise, and the eleventh amendment was adopted.

I will say also that right at that time, when the eleventh amendment was adopted, the first portion of this proposed substitute was enacted into law. And I do not want the Senate to think that all of this which has been read is my amendment. This portion of the substitute which I have offered is the present law.

SEC. 720. That the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

As I have stated, that is the present law. During the time that that constitutional amendment was pending for adoption by the States, the first part of that was passed in 1793. The latter part, with reference to bankruptcy, was passed in 1873. The portion which I propose to add is this:

Nor shall a writ of injunction or a restraining order be granted by any court of the United States against officers of any State in executing State laws until upon the final hearing and determination of the cause by the court where such action was instituted.

Now, as I was saying, from the time the eleventh amendment was adopted on down to the present, the courts have been determining in perhaps forty-odd cases where that line of demarcation is and what the eleventh amendment means. In two-thirds of those cases perhaps, for one reason or another, the courts have held that it did not prevent suing of State officers; and in a third, or a little more, of those cases the court has held that it meant that you could not sue State officers. In this one-third, or a little more, it has been held that you could not sue State officers because it was a suit against the State and prohibited by the eleventh amendment. But all the way along in all those cases there have been dissenting opinions. While the court may have decided, by a majority opinion, that suits against State officers were not in violation of the eleventh amendment, there has been a minority in almost every instance of the court, or at least in many instances, that has held that it was in violation of the eleventh amendment. And I may say that in many of those cases where they have held the reverse there has also been a dissenting opinion. I will say, though I have not taken pains to examine all of the cases, in most of them there has been a dissenting opinion holding the other way. So that we see that in each particular case there has been some question and a divided court. And I undertake to say that to-day, after a century of construction, that no dozen lawyers could be found that would agree just when a case comes within the prohibition of the eleventh amendment. To one who has read those opinions it must appear that the questions of the case involved have controlled more than any well-defined philosophy of opinion.

In the first case, perhaps, that came up after it was adopted, it was held that if the State was named as a party the action could not be maintained, because you were suing a State; and in the very next case that came up the court held that you could not look beyond the record to see who the parties were. Then, in the next case that came along, it was held that you must look beyond the record to see who the real party at interest was so as to decide whether the State was a party or not.

The first cases that were determined were determined upon whether the official was doing what he was doing by his discretion or by his duty. A little further along we find the pecuniary interest of the State in the particular case becoming the criterion. In some of the cases absolutely parallel they have been held one way and in other instances in another way, showing that there has been an uncertainty all the way down as to just where this line of demarcation is and just when and just how you could sue State officers. The personnel of the court changes, and the opinions of the same persons have undergone modification, perhaps, in some instances.

Now, let me suggest another thing in passing: In every single one of these cases, so far as I can now recall—and I have gone through, I think, pretty much all of them in times past, although I have not done it very recently—in every single one of those cases which has gone to the Supreme Court every right could have been secured; every right that has been sought to be maintained in the Federal court by this particular process of suing State officers in a Federal court could have been maintained, and the rights of those individuals could have been maintained by other methods than by going into this court. In the recent case from Minnesota that the Senator from North Carolina [Mr. OVERMAN] has referred to there was not any apparent contention anywhere but what the railroads could have maintained their rights in the State courts there equally as well as in the Federal courts, and the result would have been reached and every constitutional question determined as well in the State courts as in the Federal courts, and if either party had been dissatisfied they could have still carried it to the Supreme Court of the United States. So I say that, in my opinion, Congress must, and will at some time, undertake to determine just where the line of demarcation is.

I am not going to take any more time this morning. I have said more than I really intended to say, for I think I have sufficiently measured the feeling of the Senate, in talking with its members individually, to appreciate the fact that the work of the committee, perhaps, is going to be indorsed and that my amendment will not prevail.

I was sorry that the committee, in its wisdom, did not bring out a bill along these lines. However, I will say to the Senator from North Carolina that, in my opinion, his bill is a very great improvement on what we now have, and I would rather see that sort of legislation go through than none at all.

Mr. OVERMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from North Carolina?

Mr. BURKETT. I will in just a moment. It occurs to me, however, that we had better say now that the court shall not issue injunctions against State officers until after they have had a hearing on the merits of the case.

Mr. OVERMAN. I want to say to the Senator from Nebraska that on February 3 I introduced a bill, which is very similar to the proposition of the Senator from Nebraska. My bill provided

that section 720 of the Revised Statutes should be amended so as to read as follows:

SEC. 720. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. And no district or circuit court shall have jurisdiction to enjoin or restrain any State officer from the execution of the law of a State.

If it had gone a step further, it would have been exactly like the Senator's bill. I would be in favor personally of his bill, but it would be impossible to get such legislation as that at this time. Therefore the Senator from Minnesota has drawn a substitute which as I think, will correct the evils sought to be corrected.

Mr. BURKETT. I will say to the Senator that it seems to me, as I read the legislation of our country and the decisions of our courts, that we have been perhaps more careful about protecting property rights in this country than we have been about protecting the rights of individuals and the liberty of the person. The Federal courts, for example, have practically shut off the writ of habeas corpus to the individual, and yet, so far as I can find, they have never denied in the case of a property right, whether of a corporation or otherwise, the writ of injunction. I will say also that the Congress has taken away from the individual, in the case of a writ of habeas corpus, the right to appeal to the Supreme Court of the United States. I am not going to take the time to discuss that further, but if we can afford, and it is proper legislation, to deny the writ of habeas corpus to individuals in the Federal courts, we can afford to withhold some of the rights of injunction when property is concerned in those courts.

I recall one case now where the defendant was seeking a writ of habeas corpus, and he set forth that he had even been denied a jury trial, and yet he was denied a review of his case on habeas corpus and denied the right of habeas corpus in the court at that time. The court held in that case that if he claimed that some right under the Constitution had been denied, his remedy was by writ of error. I do not know any civil cases that have gone quite that far, and I do not know of any legislation that has gone as far as the act of 1868 in denying the right of appeal in habeas corpus cases to the Supreme Court.

So, I say I am not going to discuss this amendment further. I am simply going to ask for a vote on it, and if the amendment is lost, I hope the bill the Senator from North Carolina has introduced as amended will prevail.

Mr. CLAY. Mr. President, the Senator from North Carolina [Mr. OVERMAN] unintentionally did an injustice to one of the Federal judges in my State in the northern district. He said that this legislation was intended to correct certain conduct of certain judges, naming one in Alabama and in Georgia, in granting injunctions to set aside State statutes in those States. I wish to say to the Senator, I know he did it unintentionally.

Mr. OVERMAN. I did not mention any name. I understood the same trouble had occurred in Georgia that had occurred in Alabama.

Mr. CLAY. No; the same trouble did not occur in Georgia. A bill was filed in the Federal court in my State to enjoin the enforcement of certain statutes. The bill was presented to one of the Federal judges, Judge W. T. Newman, one of the ablest and purest men I have ever known. He granted a writ nisi, calling upon the defendant, the State, to show cause why the injunction should not be granted. When the case came on to be heard a demurrer was filed, on the ground that the Federal court had no jurisdiction to enjoin the State. After a hearing lasting a week, in which the ablest counsel in this country were engaged, Judge Newman sustained the demurrer, ruling that the State could not be made a party in such a case. The case is now pending in his court, and there has never been any appeal from his decision. I simply state this in justice to Judge W. T. Newman.

Mr. HEYBURN. Mr. President, it seems to me without precedent that we should take up for determination a question of this importance under the five-minute rule at this period of the session. It is safe to say that no more important question, or no question involving more important legal propositions, will be presented to the Senate at this or any other session.

In the first place, in my judgment, this proposed legislation, whether as written in the bill itself or in the amendment of the Senator from Nebraska [Mr. BURKETT], is in violation of the Constitution of the United States in its direct terms. I can not understand how the bill could have been reported in view of the application of section 1 of Article III of the Constitution to its present phraseology. That section provides that in all controversies in which a State shall be a party the Supreme Court of the United States shall have original jurisdiction; and this bill undertakes to deprive that court of jurisdiction, or to ignore its jurisdiction, and to place the jurisdiction elsewhere. They have even proposed that the district courts of the United States, which are merely the creatures of Congress, shall have a jurisdiction that by the Constitution is vested by express terms in the Supreme Court of the United States.

The question as to whether or not the statute of a State is in violation of the Constitution of the United States is always determined—well, I may say "always"—through the process of injunction. That is the method and the manner by which such questions are determined. It is not the kind of an infraction of the law that can be brought into court on the ordinary pleadings and presented as an issue between individuals. But the question of whether the legislature of a State has exceeded its powers has been determined, I may almost say always, by the court through the exercise of its power to enjoin the execution of the law of the State and it is a very proper method, and a convenient one.

If a State, in the name of its officers—because, as a rule, that is the way a State proceeds—is interested in maintaining the action of one of the coordinate branches of the State government, to wit, the legislature, then the State is in fact a party to the controversy and is within the rule of the provision of the Constitution to which I have just referred.

This bill undertakes to take away from the Supreme Court of the United States all participation in the determination of such questions, except as it is provided in the final paragraph, that appeals may be taken. Then this bill undertakes to give the parties a right to appeal to the Supreme Court of the United States on interlocutory motions. It departs from the ordinary rule that the jurisdiction of the Supreme Court of the United States attaches only to proceedings that are final in their character, and undertakes to give the right of appeal to the Supreme Court on motions and temporary restraining orders. It is such a radical change, such a radical invasion upon the existing rule of practice and procedure in the United States courts, that it should not be taken up for consideration in any hasty manner or under any limited rule for its discussion.

I was at first prompted to object to the consideration of the bill, but it is a question which has been discussed extensively and agitated in the public mind to such an extent that I thought perhaps we might as well take it up at least for preliminary consideration at this time.

Let me call attention to some of the provisions of the bill that I think must have escaped the attention of the committee reporting it. It provides:

That no temporary or interlocutory injunction, or temporary restraining order, or decree suspending or restraining the enforcement, operation, or execution of any statute of any State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued or granted by any circuit or district court of the United States or by any judge or justice thereof upon the ground of unconstitutionality of the statute.

That is the only place where the Supreme Court of the United States is recognized—in the mention of the word "justice," because that designation applies to no other judge except a member of the Supreme Court of the United States. That provision undertakes to give coordinate jurisdiction to enforce the orders and decrees of the Supreme Court of the United States, it may be, to a district judge or a circuit judge. Now, let us see for what purposes. To determine, according to the language of the bill, the constitutionality of a statute of a State; in other words, the integrity of a law of a State. That is an action to which the State is a party, although it may be conducted in the name of an officer of the State merely as a matter of form and usage. It is not necessary that the action should be denominated "So-and-so, plaintiff, against The State of Pennsylvania," for instance. If it is an action for the purpose of determining the validity of the law of a State, it is an action to which the State is a party, because it is a law of the State and the State is the one that is interested in maintaining the integrity of the legislation enacted by one of the coordinate branches of the State government.

Are you going to cut out the Supreme Court of the United States entirely from consideration of the question as to whether or not the State has departed from its sovereign power and gone beyond it in enacting a law and enforcing it? Suppose it is a law for the collection of the revenues of the State; suppose it is a law which goes to the very integrity of the State and the State's existence. Are you going to say that that is not an action within the provision of the Constitution of the United States which designates actions to which a State is a party in interest, and say that the Supreme Court of the United States is not to have the jurisdiction that is given it by the Constitution? I do not believe you can do it.

I know, perhaps, what the answer will be—that this is not such an action as is contemplated by this provision in the Con-

stitution, but I think, upon a mature consideration of the nature of the actions that are really under consideration in this proposed legislation, Senators will find that they are just such actions as are contemplated by this provision of the Constitution.

Let us pursue the language of this bill a little further; let us see what we are authorizing the courts to do, and what courts we are authorizing to perform these acts. I have read the bill down to the statement as to the determination of the constitutionality of a statute. Now, it says that this shall not be done—

Unless the application for the same shall be presented to a circuit judge—

Under the Constitution a circuit judge is no part of the machinery of the Supreme Court of the United States. A circuit court is a statutory court. The Supreme Court is not; it is a constitutional court. We create circuit courts and district courts by acts of Congress; and it is now proposed to change the status of those courts and even abandon the name of "circuit court."

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. HEYBURN. Certainly.

Mr. SUTHERLAND. Do I understand the Senator from Idaho to contend that because an action brought against an officer of a State involves the constitutionality of a law of the State that is an action against the State?

Mr. HEYBURN. Mr. President, I undertook to distinguish between the line of thought suggested by the question of the Senator from Utah and the line of thought suggested by the language of this bill. It depends upon the nature of the action. Some actions would be and some would not be. If the action were one affecting an individual interest, it would not be; if the action were one affecting the validity of a statute upon which the State bases its right of action as a State, it would be.

Mr. SUTHERLAND. Suppose it were an action brought by a citizen against an officer of a State who is seeking to enforce a State law. The citizen or the individual brings an action against the officer, claiming that the law which the officer is seeking to enforce is an unconstitutional law. Does the Senator in that case say that it is in effect an action against the State?

Mr. HEYBURN. No; I have endeavored to say, and I say again, if it were an action that affected only an individual interest, then it would not be an action against the State. If it were an action that affected the right of the State to maintain a law enacted as a part of the government of the State on behalf of the State, then it would be.

Mr. SUTHERLAND. Well, the action to which I referred would be——

Mr. HEYBURN. It is not necessary to consider that. If this bill is broad enough to include another class of legislation that would bring it within the prohibition of the Constitution, why should we pause to consider possible actions in which the question would not be involved? This proposed legislation is written in language broad enough to cover both classes. I repeat, in order that there may be no misunderstanding as to what I say, that where an action is one affecting individual rights it is not within the constitutional prohibition; but where it is an action undertaking to establish the policy of the law of a State, it is within it, because the whole State is a party, and the only party interested.

You must keep that distinction squarely in mind. If the bill is drawn in such broad terms as that it would be applicable to either; we may dismiss from our minds the one consideration and direct our minds to the one that is sufficient.

Mr. SUTHERLAND. Mr. President, as I understand this provision, it is:

That no temporary or interlocutory injunction, or temporary restraining order, or decree suspending or restraining the enforcement, operation, or execution of any statute of any State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued.

Mr. HEYBURN. Yes. Now, Mr. President, the process is the same. If it were a statute authorizing the levy of a tax to maintain the State government, the method of attacking it would be to restrain the assessing officer from performing the function that was vested in him by the act. I am speaking only of those cases in which the State's existence or integrity as a government is involved, and I say that the language of the bill is so broad that it will include or attempt to include that class of cases. It is a waste of my time to undertake to discuss questions as to controversies involving individual rights. I am not discussing it at all from that standpoint, but where the State enacts a law for the collection of taxes for the maintenance of the State government, it is something that no particular individual is more interested in than another. It affects a right that is common to all the individuals of the State. I might name a number of other instances of the same character. They affect the governmental policy, the governmental existence of the State. It is because this bill is so broadly drawn as to include those that I have felt impelled to make the remarks that I am making, and I am not to be diverted from that position by the fact that there are innumerable conditions and cases and circumstances to which the objection I make would not apply.

Mr. President, this bill undertakes to limit the right, under any circumstances, in the class of actions enumerated in the proposed statute, to apply for relief to anyone except certain designated officers under certain enumerated conditions. The United States Supreme Court, by virtue of the power that created it, has the right to make any order, temporary or otherwise, necessary to protect its jurisdiction or to make it effective, and Congress can not take that power from the Supreme Court of the United States. That is inherent, and if the Supreme Court of the United States, acting under its rules, which it makes pursuant to the authority vested in it, says that a justice of that court may grant an injunction without notice where the rights of the State are affected within the provisions of the Constitution that I have already read, Congress can not take the power from it, because it is the exercise of a power necessary to preserve the jurisdiction of the Supreme Court of the United States, which it takes, not from Congress, but from the Constitution.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. HEYBURN. Certainly.

Mr. SUTHERLAND. I call the attention of the Senator from Idaho to the fact that the proposed act is in negative terms. It provides that no temporary injunction, and so on, shall be issued unless certain requisites be provided. What language does the Senator find in the bill which enlarges in any way the power of the courts as they exist to-day? In other words, it does not attempt to enlarge the jurisdiction. It simply provides that before certain things are done certain prerequisites shall have been observed.

Mr. HEYBURN. I am not objecting to the bill so much on the ground that it enlarges the jurisdiction as on the ground that it undertakes to take away from the Supreme Court and the members of that court a jurisdiction which it now has by virtue of the constitutional grant and not by virtue of anything that Congress has authorized it to do.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Pennsylvania?

Mr. HEYBURN. Certainly.

Mr. KNOX. I call the attention of the Senator from Idaho to the fact that there is no limitation on the Supreme Court of the United States. The limitation is on the judges of the circuit or district courts of the United States. Of course when a justice of the Supreme Court of the United States sits in a circuit court of the United States he does not sit as a justice of the Supreme Court of the United States, exercising its original powers, but he sits as a circuit judge, and this limitation is only upon the circuit court, and by no process of construction that I can grasp would it apply to the Supreme Court.

Mr. HEYBURN. I have no contention at all with the suggestions of the Senator from Pennsylvania. I certainly did not intend to be understood as suggesting that the Supreme Court justice retained that character when sitting on the circuit. He sits there as a member of the circuit court by designation, and not as a member of the Supreme Court.

By this bill it is undertaken to create a new jurisdiction over something of which an established court now has jurisdiction and to change the nature of the jurisdiction of that established court, which is the Supreme Court of the United States. Of course the district court and the circuit court are the intermediaries between a party aggrieved or deeming himself aggrieved and the court of last resort. They are a part of the machinery that lead up to the Supreme Court, but they are not any part of the Supreme Court of the United States. What I object to is undertaking in this bill to say that these officers enumerated in the bill shall have these powers, because they already belong to another court.

Another thing I object to—and my first and original notes were to that effect—is that the bill undertakes to confer the right of appeal to the Supreme Court "from any order or decree granting or denying, after notice and hearing, a temporary or interlocutory injunction or restraining order in such case."

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Pennsylvania?

Mr. HEYBURN. I do.

Mr. KNOX. I wish to say to the Senator from Idaho that I really believe he is wrong in his construction of this bill. I think the bill does not in the slightest degree confer any power where it does not now exist. The purpose of the bill is to put a limitation upon the exercise of an existing power, not to create any new power in the court. The bill does not pretend to say that any State officer or in any form of proceeding to which a State may be a party or in which it may be interested it can be enjoined under the circumstances prescribed in this bill where it could not now be enjoined by a single judge.

I did not have the honor of being present in committee on Monday when the bill was finally ordered to be reported, but there had been some preliminary discussion about the bill in the committee, and its whole scope and purpose, as I understand, and I think the wording of the bill bears it out, is to say to the judges of the United States court that hereafter no individual judge sitting in one of the lower Federal courts, district or circuit, shall lay his hand, where he now has the jurisdiction to lay it single-handed and alone, upon an officer of a State to restrain the operation of a law of the State, unless his judgment is corroborated by two of a court composed of three, in the manner prescribed by the bill. I think that was the purpose of the original bill and is the purpose of the substitute which the Senator from Minnesota has reported.

Mr. HEYBURN. If that is the purpose—and I have no doubt it is correctly stated by the Senator from Pennsylvania—there was no necessity of saying anything more in this bill than what he has said at his desk. The difficulty with this bill is in the elaboration——

Mr. KNOX. I think it says that.

Mr. HEYBURN. It says that, but in its elaboration it creates an uncertainty and an attempt to enlarge a jurisdiction in one way and to restrict it in another, which makes the bill, in my judgment, need some consideration at this time, if it is only the consideration of discussion. It is not well to pass a bill like this without having some explanation of it and some discussion.

It provides as follows:

> Whenever such application as aforesaid is presented to a circuit judge he shall immediately call to his assistance, to hear and determine the application, one circuit judge and one district judge or another circuit judge.

There is no circuit judge in the States of Montana, Idaho, Utah, Colorado, and Nevada. There is one in Oregon. There are two in California; none in North Dakota. That is a question of convenience, and it must be considered also in legislating upon a question of this kind, whether the law is of convenient, practical application or not. Now, our legislatures in those several States that constitute that circuit meet at the same time, and they are enacting laws, and many of them become operative immediately upon the signature of the governor, and the question of determining their application is sometimes one of quick necessity. It is sometimes one that requires an immediate application to a court to prevent the enforcement of a statute that may work great injury and where the aggrieved party may be practically without a remedy in the way of compensation.

This bill was evidently drawn by those who are accustomed to live in States where things are close together; where you can telephone a few blocks and get a circuit or district judge. In our State the district judge lives at the extreme end and corner of the State. It is 513 miles from the city in which I live to where the district judge lives. It is more than a thousand miles to where the circuit judge lives. It would not be possible, much less convenient, to get such a hearing as is provided for by this bill. I believe questions involving the constitutionality of the enactments of a State legislature should not be dealt with "off the bat," if I may use the term. They should be dealt with after due deliberation, and I believe more than one judge should pass upon them; but I believe that for the purpose of that quick and prompt action necessary to preserve rights which may be jeopardized by delay there should be some other provision than that contained in this bill.

I presume in North Carolina, probably overnight, you could bring together three judges of the class named in the bill. You could not do it in our part of the United States in so many days very often for even the preliminary steps; and this proposed law being of general application, it is proper that those of us who are surrounded by exceptional conditions should take notice of these things. It is at least wise that the attention of Congress be called to these objections in passing upon the measure.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Michigan?

Mr. HEYBURN. Certainly.

Mr. SMITH of Michigan. How many Federal judicial districts are there in Idaho?

Mr. HEYBURN. One. That is called Idaho. There are one in Montana, one in Utah, one in Nevada——

Mr. SMITH of Michigan. Where does the circuit judge live?

Mr. HEYBURN. The nearest circuit judge lives in Portland, Oreg.

Mr. McCUMBER. There is one in St. Paul.

Mr. HEYBURN. And the next one in St. Paul, and the next one in California. You must not lose sight of those conditions in enacting a law of general application; at least, we must not lose sight of them.

The provision at the top of page 3——

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Pennsylvania?

Mr. HEYBURN. Certainly.

Mr. KNOX. I want to call the Senator's attention to the fact that the length of time that would be necessary to assemble the court would be running while the five days' notice was running. Such a case, under the provisions of this bill, could not be heard and determined until five days' notice of the hearing had been given to the governor and attorney-general of the State. As soon as the proceedings had been begun and notice had been served upon the circuit judge he would have to assemble his court, and he would have at least the full statutory period provided there, before which it would not be possible to hear or determine the case.

Another thing I wish to call attention to is that this does not necessarily limit the court that is to sit and hear it to the judges of the particular circuit in which the suit is begun. He can draw from the whole country to get a judge to sit with him.

Mr. HEYBURN. The whole country is farther from us than our neighbors.

Mr. KNOX. But sometimes a neighboring judge may be employed in such a way that he could not come. Then the next most convenient one could come.

Mr. HEYBURN. A little information may be useful here. I have known this condition of affairs to exist: The only United States judge in Montana was sitting in California on the circuit court of appeals. Our judge in Idaho was sitting in California to relieve Judge Morrow, sitting in the circuit court. Judge Hanford, of the State of Washington, was also sitting in California, and the circuit judge who lives in Oregon was sitting in the circuit court of appeals in California. That all happened at one time, and I had personal occasion to know it, because I was there transacting business with those courts. Then there was no judge within a thousand miles. The nearest United States judge to Spokane was in Dakota, to the east; Salt Lake the nearest to the south; or Nevada. It happened at that time that the judge of Nevada was sitting also in court in San Francisco. I have taken one time as an illustration. There was no judge in the State of Washington, the State of Idaho, the State of Montana, or the State of Oregon.

There was the condition. These other judges were engaged in hearing causes in California, and they could not have responded. An application might have been made to them, because they were in the circuit, by going to California. The papers could have been prepared and submitted to them in California, and they could have issued an order, but they were engaged in the performance of their judicial duties, holding court, some of them in the middle of long trials. While nominally they were available, as a practical effect they were not available at all.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Michigan?

Mr. HEYBURN. Certainly.

Mr. SMITH of Michigan. Under the proviso, before a restraining order can be issued to arrest irreparable injury or damage to property, at least two judges must join in making the order. If at the time the notice is given it seems that irreparable injury will be suffered if the order is not granted, a temporary restraining order may be issued, but it requires a majority of three judges to do it.

Mr. HEYBURN. In the first place, you must get to the judge, and if this condition of affairs arises in our country—and such conditions arise pretty sharply sometimes in those mining camps—they arise overnight; we have had to have the Army of the United States in there twice——

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Pennsylvania?

Mr. HEYBURN. Certainly.

Mr. KNOX. May I interrupt the Senator for a moment? I fully sympathize with the precaution displayed by the Senator from Idaho in trying to throw all possible protection around the proper exercise of Federal jurisdiction, but I think he misses sight of the essential and only point here. This is not intended to provide a new method of procedure or any method of procedure in connection with any condition that may arise in the mines of Idaho, arising out of disturbance or disorder. The sole and simple purpose of this bill is to prevent a single inferior Federal judge from pronouncing a law of a State unconstitutional. It is not to be presumed that any State of this Union is going to pass any law so preposterous in its terms or so damaging in its effect that the short period of time that is prescribed here to assemble the court to hear and determine the constitutionality of the law can not pass without any serious injury to the public. In my experience I know of no case where a greater period of time has not expired under existing conditions before a single Federal judge has enjoined the operation of State law than would possibly elapse under the terms and provisions of this bill.

I hope the Senator from Idaho will speak to this bill with that notion in his mind—that that is the sole and only purpose of the measure.

Mr. HEYBURN. I realize the force of the suggestion and argument of the Senator from Pennsylvania. I am speaking from an entirely different standpoint from any to which he is accustomed. I have known a legislature that I have in my mind to pass an act that undertook to say who should be hired and who should not be hired under certain conditions; and I remember when it was necessary to take very quick action in regard to it. I do not care to embarrass this question by going into details about it, but I think other Senators have known like conditions to exist. I do not want this legislation to add to the inconvenience that exists under present law. The Federal judges in our country have always stood by the law and for the law, and they have saved us many times from the rule and reign of lawlessness. Our Federal judges have stood between us and riots and the destruction of property. They could not entirely prevent it, but they stayed the hand at the earliest possible moment; and I recall an instance where, by an order from a Federal judge, a mob of rioters numbering thousands was stayed in an hour or two, just as quick as the marshal could get there. I have no doubt that condition has existed in the Senator's State and in other States.

Mr. KNOX. The Senator from Idaho does not wish us to understand that Federal judges have stayed the destruction of property which was impending under the authority of any State statute, I hope; and if that is not the case, then the criticism does not apply.

Mr. HEYBURN. These people had secured control of the legislature for one term, and they had enacted some laws that gave them all of the privileges they had been crying for, and they claimed the right to exercise those privileges, and I think a little investigation of the statutes and the conditions will make very plain what I refer to.

I do not want to bring into this discussion any element of partisanship or of that sharp controversy which exists in this country between labor and capital, as it is called, because I did not rise for that purpose and I do not intend to discuss it. I only want the convenience of our courts to be maintained. I want to be able to go to a United States judge and get a restraining order to restrain those who may undertake to defy the law. I do not want to have to get three judges together where one can accomplish the purpose, simply because it is easy enough to get three judges together in the city of Philadelphia or the city of Washington, or any of these large centers. It is not possible very often to get three judges together in the more thinly settled parts of this country in which we live. But we can always find some one judge.

I remember once having to go clear to San Francisco to find a Federal judge who had jurisdiction to issue certain writs of injunction, and he was the only judge, when I got there, who was in the city who could do it. We are sometimes at a great disadvantage in our country. I have often thought how pleasant it would be to practice law in a city where you get on a street car and go to any court of the State. Instead of that we sometimes have to travel 500 or 1,000 miles.

I want to have this matter thoroughly aired and considered here, so that when we enact this statute we will come as near the right line as it can be drawn.

In respect to what I have said in regard to the attempt that the bill contains, not to confer a jurisdiction, but to limit a jurisdiction that now exists, I think my point is well taken from the standpoint from which I state it, not from the standpoint suggested by the Senator from Utah, not from the standpoint suggested by the Senator from Pennsylvania, but from the standpoint which is peculiar and yet which is applicable to the conditions I have represented.

Mr. President, I think when the question of the validity of a statute affecting the right of a State to collect revenue, to perform those acts which are functions of a State as a State is to be tested, the place to test it and the only place is in the Supreme Court of the United States, which has original jurisdiction for that purpose conferred upon it in express language by the Constitution, and if it has original jurisdiction that is the place to exercise it.

Now, then, to say that the steps that are necessary to be taken to maintain the integrity of that jurisdiction shall be conferred upon three judges only, after notice and hearing, of course, while it is not suggested that that would be conclusive of the jurisdiction of the Supreme Court of the United States, yet nevertheless it has that appearance on its face, and it looks to me as though the fact is lost sight of that the Supreme Court has jurisdiction.

Mr. President, it was not my intention to do anything more than to call attention to these facts. I do not think the bill ought to be considered under Rule VIII, and I have transgressed the five-minute rule of the Senate many times in discussing this question. My purpose was to ask that the bill go over under Rule IX.

Mr. BACON. I understand the bill is not up under Rule VIII.

Mr. HEYBURN. Yes; it is up under Rule VIII.

Mr. BACON. I understand it was taken up by unanimous consent.

Mr. HEYBURN. Under Rule VIII.

The VICE-PRESIDENT. The Senator from Georgia is correct. It was taken up by unanimous consent.

Mr. BACON. It was taken up by unanimous consent.

Mr. President, I am very anxious for the passage of this bill, and I am not going to occupy the time of the Senate more than for a very few minutes, because at 2 o'clock, as I understand, it will be displaced. Consequently I shall be very brief.

Mr. President, I very greatly favor this legislation, which will as far as possible protect the States against the irresponsible granting of injunctions by Federal judges restraining the operation of State statutes. I desire to state that I introduced a bill on this subject upon which this substitute of the committee has been modeled. In fact, it is practically the same bill, contains the same provisions, and in a large part the same words. The only addition to the bill, as introduced by me, is that with reference to the contingency of irremediable loss in case speedier action was not had than that under the five-day provision of the bill. The unnecessary change in phraseology does not in any degree change the identity of the bill. The importance of securing the desired legislation is too great to haggle over matters of detail. Nevertheless, Senate bill 5109, which was introduced by me, and upon which the substitute was modeled, is superior in form to the one that is before the Senate. It is a simpler bill and it avoids some of the things which the Senator from Idaho [Mr. HEYBURN] has been discussing.

The ordinary course, the one usually pursued, naturally would have been for the committee simply to have put on the amendment with reference to the irreparable-injury contingency, if such amendment was deemed proper, and to have passed the bill in its original shape. It is not customary to present a substitute for a bill simply to incorporate thereon one short amendment. But I am so anxious that we should have legislation on this line that I will not make any issue on the subject, but let it go with this statement. I simply ask that, without reading, the bill as originally framed and introduced by me may be put in the RECORD, although, if any Senator desires, it can be read. It is short.

The VICE-PRESIDENT. Without objection, the original bill will be inserted in the RECORD.

The bill introduced by Mr. BACON February 6, 1908, is as follows:

A bill (S. 5109) relating to the issuance or granting of injunctions, interlocutory orders, or decrees by circuit and district courts of the United States or by any circuit or district judge thereof, suspending or restraining the enforcement, operation, or execution of any statute of any State or the action of any officer of such State in the enforcement or execution of such statute in certain cases.

*Be it enacted, etc.*, That no injunction, interlocutory order, or decree suspending or restraining the enforcement, operation, or execution of any statute of any State or the action of any officer of such State in

the enforcement or execution of such statute shall be issued or granted by any circuit or district court of the United States or by any judge or justice thereof upon the ground of unconstitutionality or upon any ground whatsoever unless the application for the same shall be actually heard, and upon issue made and preliminary proof taken, by affidavit or otherwise, the judgment thereon rendered by at least three judges; and each of at least two of said three judges shall be either a judge of the circuit court of the United States or a circuit justice of the Supreme Court of the United States.

No such injunction, interlocutory order, or decree shall be issued or granted except on hearing after not less than five days' notice to the governor of such State and to such other officer or officers as shall be proper parties to said application. An appeal may be taken from any such injunction, interlocutory order, or decree issued or granted upon such application, which appeal shall lie directly to the Supreme Court of the United States, and shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

Mr. BACON. The purpose of the bill is to throw additional safeguards around the exercise of the enormous powers claimed for the subordinate Federal courts. If these courts are to exercise the power of stopping the operation of the laws of a State and of punishing the officers of a State, then at least let it be done on notice and not hastily, and let there be the judgment of three judges to decide such questions, and not permit such dangerous power to one man.

The necessity for this legislation is a very grave one. It is a most serious trouble which now exists—that by the action of one judge the machinery of State laws can be arrested. My individual opinion is that that is an unlawful proceeding. I believe that a proceeding against the officers of a State to arrest the operation of the statute of a State is in violation of the eleventh article of the Constitution.

I will not stop to discuss that, Mr. President, for the reason stated—time does not permit. It has recently been before the Supreme Court of the United States in what is known as the "Minnesota case." I most deeply regret the decision of the court in that case. I can do no more now than cite the dissenting opinion of Mr. Justice Harlan in that case. I would not suggest the language myself in this place, but I may say without impropriety that Mr. Justice Harlan has said in that dissenting opinion that the decision trampled upon the rights of the State of Minnesota, and I may add that if it trampled upon the rights of the State of Minnesota, it necessarily trampled upon the rights of every other State.

I am going to ask that there may be inserted in the RECORD, as a part of my remarks, the dissenting opinion of Mr. Justice Harlan in that case. I regard it as a most important matter, and one that the solution of this particular piece of legislation only begins to touch. The time is ahead of us, and not far ahead of us, when we have got to deal with the question whether or not, as stated by Mr. Justice Harlan, under such a rule as that laid down in this case, the subordinate Federal courts are to supervise and control the official action of the States as if they were dependencies or provinces. If these subordinate courts can exercise such power, then, indeed, the States are but provinces and dependencies. We have got to deal with that question in the near future, and it is one of the most important which can possibly be submitted to us for solution. But, as I said, time does not permit me now to discuss it. I want to say, however, that this legislation is not without precedent.

There was an act approved February 11, 1903, in which, where very much less important interests were involved, Congress provided that certain cases should only be heard when three circuit judges presided. I will give the title of that act, because I do not wish to consume the time in reading the entire act, although it is short. It is "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted." After going on and speaking of a certain situation, it says:

Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select.

So this has a precedent. That act was passed while the present junior Senator from Pennsylvania [Mr. KNOX] was the Attorney-General, and I have been informed that it was drawn by him. Following that precedent, I framed and offered an amendment to the rate bill in the Fifty-ninth Congress requiring two judges to preside and concur in the judgment before any order of the Interstate Commerce Commission in regard to railroad rates should be enjoined or restrained.

I want to say, Mr. President, that this question of the powers of the Federal courts in their relation to the State and to control of legislation is one which has existed from the foundation of the Government. I saw the other day in Watson's Jeffersonian Magazine, which is published in Georgia, a reference to a debate in the Senate in 1802, which I have since had occasion to examine, a most extended and elaborate debate, in which even in that early day the fathers were engaged and greatly concerned upon the question as to the power of the Federal courts in arresting the proceedings under legislation, Federal and State. If time permitted, I would like to read from that historic debate.

Mr. President, it is a great question; and while it has lasted so long, it is one which is now pressing for solution with very much more acuteness and gravity than it ever has done in the past.

I hope this bill will pass. It comes with the unanimous report of the Judiciary Committee. I will vote for the amendment offered by the Senator from Nebraska because I believe, as I have said, that they have no power to issue the injunctions at all restraining a State officer from executing a State law, that it is a violation of the eleventh amendment to the Constitution, which prohibits a suit against a State. As is most clearly shown by Mr. Justice Harlan in his dissenting opinion in the Minnesota case, it is a play with words to talk about enjoining the officer of a State in the execution of the laws of a State and say that that is not a suit against a State.

Can it be contended that the eleventh amendment simply has reference to the protection of a State so that it may not be sued for money, but that it may be sued to arrest it in the exercise of the powers which were reserved to it when they made the General Government? It is utterly inconceivable that it was contemplated in the formation of the Federal Government that a Federal judge could under the Constitution which was being formed, arrest the laws of a State, and put the officer of the State engaged in the enforcement of the laws of the State in the custody of the marshal of the court and fine and imprison him for not obeying its sovereign order! How many States would have ratified the Constitution with such a provision plainly written in it? It is safe to say not one.

There is an orderly way by which the constitutionality of a State statute can be tested, and that is as provided in the Federal statute, by taking the case to the highest court of a State and thence, if necessary, to the Supreme Court of the United States. That is the road all litigants should be required to travel.

Mr. President, I should like to say more, but I desire that we may have a vote on this measure before the time expires.

The VICE-PRESIDENT. Without objection, the request of the Senator from Georgia to have the dissenting opinion of Mr. Justice Harlan in the Minnesota case inserted in the RECORD in connection with his remarks without reading is granted.

The matter referred to is as follows:

Supreme Court of the United States. No. 10, original.—October term, 1907. Ex parte: In the matter of Edward T. Young, petitioner. Petitions for writs of habeas corpus and certiorari and motion for leave to file same. [March 23, 1908.]

Mr. Justice Harlan, dissenting.

Although the history of this litigation is set forth in the opinion of the court, I deem it appropriate to restate the principal facts of the case in direct connection with my examination of the question upon which the decision turns. That question is whether the suit in the circuit court of the United States was, *as to the relief sought against the attorney-general of Minnesota*, forbidden by the eleventh amendment of the Constitution of the United States, declaring that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state." That examination, I may say at the outset, is entered upon with no little embarrassment, in view of the fact that the views expressed by me are not shared by my brethren. I may also frankly admit embarrassment arising from certain views stated in dissenting opinions heretofore delivered by me which did not, at the time, meet the approval of my brethren and which I do not now myself entertain. What I shall say in this opinion will be in substantial accord with what the court has heretofore decided, while the opinion of the court departs, as I think, from principles previously announced by it upon full consideration. I propose to adhere to former decisions of the court, whatever may have been once my opinion as to certain aspects of this general question.

The plaintiffs in the suit referred to, Perkins and Shepard, were shareholders of the Northern Pacific Railway Company and citizens, respectively, of Iowa and Minnesota. The defendants were the railway company, Edward T. Young, attorney-general of Minnesota, the several members of the State railroad and warehouse commission, and certain persons who were shippers of freight over the lines of that railway.

The general object of the suit was to prevent compliance with the provisions of certain acts of the Minnesota legislature and certain orders of the State railroad and warehouse commisssion, indicating the rates which the State permits to be charged for the transportation of passengers and commodities upon railroads within its limits; also to prevent shippers from bringing actions against the railway company to enforce those acts and orders.

The bill, among other things, prayed that Edward T. Young, "as attorney-general of the State of Minnesota," and the members of the State railroad and warehouse commission (naming them) be enjoined from all attempts to compel the railway company to put in force the rates or any of them prescribed by said orders, and "from taking

any action, step, or proceeding against said railway company, or any of its officers, directors, agents, or employees, to enforce any penalties or remedies for the violation by said railway company of said orders or either of them;" and that said Young, "as attorney-general," be enjoined from taking any action, step, or proceeding against the railway company, its officers, agents, or employees, to enforce the penalties and remedies specified in those acts.

The court gave a temporary injunction as prayed for. The attorney-general of Minnesota appeared specially and, without submitting to or acknowledging the jurisdiction of the court, moved to dismiss the suit as to him, upon the ground that the State had not consented to be sued, and also because the bill was exhibited against him "as, and only as, the attorney-general of the State of Minnesota," to restrain him, by injunction, from exercising the discretion vested in him to commence appropriate actions, on behalf of the State, to enforce or to test the validity of its laws. He directly raised the question that the suit as to him, in his official capacity, was one against the State, in violation of the eleventh amendment.

In response to an order to show cause why the injunction asked for should not be granted the attorney-general also appeared specially and urged like objections to the suit against him in the circuit court.

After hearing the parties the court made an order September 23, 1907, whereby the railway company, its officers, directors, agents, servants, and employees, were enjoined until the further order of the court from publishing, adopting, or putting into effect the tariffs, rates, or charges specified in the act of April 18, 1907. The court likewise enjoined the defendant, Young, "as attorney-general of the State of Minnesota," from "taking or instituting any action, suit, step, or proceeding to enforce the penalties and remedies specified in said act or either thereof, or to compel obedience to said act or compliance therewith or any part thereof." A like injunction was granted against the defendant shippers.

On the next day, September 24, 1907, the State of Minnesota, "on the relation of Edward T. Young, attorney-general," commenced an action in one of its own courts against the Northern Pacific Railway Company—*the only relief sought* being a mandamus ordering the company to adopt, publish, keep for public inspection, and put into effect, as the rates and charges to be maintained for the transportation of freight between stations in Minnesota, those named and specified in what is known as chapter 232 of the session laws of Minnesota for 1907. That was the act which it was the object of the Perkins-Shepard suit in the Federal court to strike down and nullify. An alternative writ of mandamus, such as the State asked, was issued by the State court.

The institution, in the State court, by the State, on the relation of its attorney-general, of the mandamus proceeding against the railway company having been brought to the attention of the Federal circuit court, a rule was issued against the defendant Young to show cause why he should not be punished as for contempt. Answering that rule, he alleged, among other things, that the mandamus proceeding was brought by and on behalf of the State, through him as its attorney-general; that in every way possible he had objected to such jurisdiction on the ground that the action was commenced against him solely as the attorney-general for Minnesota in order to prevent him from instituting in the proper courts civil actions for and in the name of the State to enforce or test the validity of its laws; *that there is no other action or proceeding pending or contemplated by this defendant against said railway company, except said proceedings in mandamus hereinbefore referred to.* Defendant expressly disclaimed any intention to treat this court with disrespect in the commencement of the proceedings referred to, "but believing that the decision of this court in this action, holding that it had jurisdiction to enjoin this defendant, as such attorney-general, from performing his discretionary official duties, was in conflict with the eleventh amendment of the Constitution of the United States, as the same has been interpreted and applied by the United States Supreme Court, defendant believed it to be his duty as such attorney-general to commence said mandamus proceedings for and in behalf of the State, and it was in this belief that said proceedings were commenced solely for the purpose of enforcing the said law of the State of Minnesota."

The rule was heard, and the attorney-general was held to be in contempt, the order of the Federal court being: "Ordered further, that said Edward T. Young *forthwith dismiss or cause to be dismissed the suit of the State of Minnesota* on the relation of Edward T. Young, attorney-general, plaintiff, *v.* Northern Pacific Railway Company, defendant, heretofore instituted by him in the district court of the county of Ramsey, second judicial district, State of Minnesota. Ordered further, that for his said contempt said Edward T. Young be fined the sum of $100 and *stand committed in the custody* of the marshal of this court until the same be paid, and until he purge himself of his contempt by dismissing or causing to be dismissed said suit last herein mentioned."

The present proceeding was commenced by an original application by Young to this court for a writ of habeas corpus. The petitioner, in his application, proceeds upon the ground that he is held in custody in violation of the Constitution of the United States. The petition set out all the steps taken in the suit in the Federal court, alleging among other things: "That your petitioner's office as attorney-general of the State of Minnesota is established and provided for by the constitution of said State, section 1 of Article V thereof providing as follows, to wit: 'The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general, who shall be chosen by the electors of the State.' That neither by statute nor otherwise is your petitioner charged with any special duty of a ministerial character in the doing or not doing of which said complainants in the said bill of complaint or the said Northern Pacific Railway Company had any legal right, and that whatever duties your petitioner had or has with respect to the several matters complained of in the said bill of complaint, are of an executive and discretionary nature. That in no case could your petitioner, even though it was his intention so to do, which it was not, deprive the said complainants or the said Northern Pacific Railway Company, or either of them, of any property, nor could he trespass upon their rights in any particular, and that all he could do *as attorney-general* as aforesaid and all that it was his duty to do in that capacity, and all that he intended to do or would do, *was to commence formal judicial proceedings in the appropriate court of Minnesota against the said Northern Pacific Railway Company, its officers, agents, and employees,* to compel the said company, its agents and servants, to adopt and put in force the schedule of freight rates, tariffs, and charges prescribed by said chapter 232, laws 1907, of the State of Minnesota." He renewed the objection that the suit instituted by Perkins and Shepard, in so far as the same is against him, was a suit against the State to prevent his commencing the proposed action in the name of the State, and was in restraint of the State itself, "and that the said suit is one against the said State in violation of the eleventh amendment to the Constitution of the United States, and that therefore the same is and was, so far as your petitioner is concerned, beyond the jurisdiction of the said circuit court," etc.

This statement will sufficiently indicate the nature of the question to be now examined upon its merits.

Let it be observed that the suit instituted by Perkins and Shepard in the circuit court of the United States was, as to the defendant, Young, one against him *as, and only because he was,* attorney-general of Minnesota. No relief was sought against him individually but only in his capacity *as* attorney-general. And the manifest, indeed the avowed and admitted, object of seeking such relief was *to tie the hands* of the *State* so that it could not in any manner or by any mode of proceeding, *in its own courts,* test the validity of the statutes and orders in question. It would therefore seem clear that within the true meaning of the eleventh amendment the suit brought in the Federal court was one, in legal effect, against the State—as much so as if the State had been formally named on the record as a party—and therefore it was a suit to which, under the amendment, so far as the State or its attorney-general was concerned, the judicial power of the United States did not and could not extend. If this proposition be sound, it will follow—indeed, it is conceded that if, so far as relief is sought against the attorney-general of Minnesota, this be a suit against the State—then the order of the Federal court enjoining that officer from taking any action, suit, step, or proceeding to compel the railway company to obey the Minnesota statute was beyond the jurisdiction of that court and wholly void; in which case that officer was at liberty to proceed in the discharge of his official duties as defined by the laws of the State, and the order adjudging him to be in contempt for bringing the mandamus proceedings in the State court was a nullity.

The fact that the Federal circuit court had, prior to the institution of the mandamus suit in the State court, preliminarily (but not finally) held the statutes of Minnesota and the orders of its railroad and warehouse commission in question to be in violation of the Constitution of the United States, was no reason why that court should have laid violent hands upon the attorney-general of Minnesota and by its orders have deprived the State of the services of its constitutional law officer in its own courts. Yet that is what was done by the Federal circuit court; for the intangible thing called a State, however extensive its powers, can never appear or be represented or known in any court in a litigated case except by and through its officers. When, therefore, the Federal court forbade the defendant, Young, as attorney-general of Minnesota, from taking any action, suit, step, or proceeding whatever looking to the enforcement of the statutes in question, it said in effect to the State of Minnesota: "It is true that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to its people, and it is true that under the Constitution the judicial power of the United States does not extend to any suit brought against a State by a citizen of another State or by a citizen or subject of a foreign state, yet the Federal court adjudges that you, the State, although a sovereign for many important governmental purposes, shall not appear in your own courts, by your law officers, with the view of enforcing, or even for determining the validity of, the State enactments which the Federal court has, upon a preliminary hearing, declared to be in violation of the Constitution of the United States."

This principle, if firmly established, would work a radical change in our governmental system. It would inaugurate a new era in the American judicial system and in the relations of the National and State governments. It would enable the subordinate Federal courts to supervise and control the official action of the States as if they were "dependencies" or provinces. It would place the States of the Union in a condition of inferiority never dreamed of when the Constitution was adopted or when the eleventh amendment was made a part of the supreme law of the land. I can not suppose that the great men who framed the Constitution ever thought the time would come when a subordinate Federal court, having no power to compel a State, in its corporate capacity, to appear before it as a litigant, would yet assume to deprive a State of the right to be represented in its own courts by its regular law officer. That is what the court below did as to Minnesota, when it adjudged that the appearance of the defendant, Young, *in the State court,* as the attorney-general of Minnesota representing his State as its chief law officer, was a contempt of the authority of the Federal court, punishable by fine and imprisonment. Too little consequence has been attached to the fact that the courts of the States are under an obligation equally strong with that resting upon the courts of the Union to respect and enforce the provisions of the Federal Constitution as the supreme law of the land and to guard rights secured or guaranteed by that instrument. We must assume—a decent respect for the States require us to assume—that the State courts will enforce every right secured by the Constitution. If they fail to do so, the party complaining has a clear remedy for the protection of his rights; for he can come by writ of error, in an orderly, judicial way from the highest court of the State to this tribunal for redress in respect of every right granted or secured by that instrument and denied by the State court. The State courts, it should be remembered, have jurisdiction concurrent with the courts of the United States of all suits of a civil nature, at common law or equity, involving a prescribed amount, arising under the Constitution or laws of the United States. (25 Stat., 434.) And this court has said: "A State court of original jurisdiction, having the parties before it, may, consistently with existing Federal legislation determine cases at law or in equity arising under the Constitution or laws of the United States or involving rights dependent upon such Constitution or laws. Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for the judges of the State courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United States made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, 'anything in the constitution or laws of any State to the contrary notwithstanding.' If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination." (Robb *v.* Connolly, 111 U. S., 624, 637.) So that an order of the Federal court preventing the State from having the services of its attorney-general in one of its own courts, except at the risk of his being fined and arrested, can not be justified upon the ground that the question

of constitutional law involved in the enforcement of the statute in question was beyond the competency of a State court to consider and determine, primarily, as between the parties before it in a suit brought by the State itself.

At the argument of this case counsel for the railway company insisted that the provisions of the act in question were so drastic that they could be enforced by the State in its own courts with such persistency and in such a manner as, in a very brief period, to have the railway officers and agents all in jail, the business of the company destroyed, and its property confiscated by heavy and successive penalties, before a final judicial decision as to the constitutionality of the act could be obtained. I infer from some language in the court's opinion that these apprehensions are shared by some of my brethren. And this supposed danger to the railway company and its shareholders seems to have been the basis of the action of the Federal circuit court when, by its order directed against the attorney-general of Minnesota, it practically excluded the State from its own courts in respect of the issues here involved. But really no such question as to the State statute is here involved or need be now considered; for it can not possibly arise on the hearing of the present application of that officer for discharge on habeas corpus. The only question now before this court is whether the suit by Perkins and Shepard in the Federal court was not, upon its face, *as to the relief sought against the attorney-general of Minnesota*, a suit against the State. Stated in another form, the question is whether that court may, *by operating upon that officer in his official capacity*, by means of fine and imprisonment, prevent the State from being represented by its law officer in one of its own courts? If the Federal court could not thus put manacles upon the State so as to prevent it from being represented by its attorney-general in its own court and from having the State court pass upon the validity of the State enactment in question in the Perkins-Shepard suit, that is an end to this habeas corpus proceeding, and the attorney-general of Minnesota should be discharged by order of this court from custody.

It is to be observed that when the State was in effect prohibited by the order of the Federal court from appearing in its own courts there was no danger, absolutely none whatever, from anything that the attorney-general had ever done or proposed to do, that the property of the railway company would be confiscated and its officers and agents imprisoned, beyond the power of that company to stay any wrong done *by bringing to this court, in regular order, any final judgment of the State court, in the mandamus suit, which may have been in derogation of a Federal right.* When the attorney-general instituted the mandamus proceeding in the State court against the railway company, there was in force, it must not be forgotten, an order of injunction by the Federal court which prevented that company from obeying the State law. There was consequently no danger from that direction. Besides, the mandamus proceeding was not instituted for the recovery of any of the penalties prescribed by the State law, and therefore no judgment in that case could operate directly upon the property of the railway company or upon the persons of its officers or agents. The attorney-general in his response to the rule against him assured the Federal court that he did not contemplate any proceeding whatever against the railway company except the one in mandamus. Suppose the mandamus case had been finally decided in the State court, the way was open for the railway company to preserve any question it made as to its rights under the Constitution, and, in the event of a decision adverse to it in that court, at once to carry the case to the highest court of Minnesota and thence by a writ of error bring it to this court. That course would have served to determine every question of constitutional law raised by the suit in the Federal court in an orderly way without trampling upon the State, and without interfering, in the meantime, with the operation of the railway property in the accustomed way. Instead of adopting that course—so manifestly consistent with the dignity and authority of both the Federal and State judicial tribunals—the Federal court practically closed the State courts against the State itself when it adjudged that the attorney-general, without regard to the wishes of the governor of Minnesota, and without reference to his duties as prescribed by the laws of that State, should stand in the custody of the marshal, unless he dismissed the mandamus suit. If the Federal court could thus prohibit the law officer of the State from representing it in a suit brought in the State court, why might not the bill in the Federal court be so amended that that court could reach all the district attorneys in Minnesota and forbid them from bringing to the attention of grand juries and the State courts violations of the State act by the railway company? And if a grand jury was about to inquire into the acts of the railway company in respect of the matter of its rates, why may not the Federal court, proceeding upon the same grounds on which it has moved against the attorney-general, enjoin the finding or returning of indictments against the railway company? If an indictment was returned against the railway company, and was about to be tried by a petit jury, why could not the Federal court, upon the principles now announced, forbid the jury to proceed against the railway company, and, if it did, punish every petit juryman as for contempt of court? Indeed, why may it not lay its hands on the governor of the State and forbid him from appealing to the courts of Minnesota in the name of the State to test the validity of the act in question? And why may not the Federal court lay its hands even upon the judge of the State court itself whenever it proceeds against the railway company under the State law?

The subject-matter of these questions have evidently been considered by this court, and the startling consequences that would result from an affirmative answer to them have not been overlooked; for, in its opinion, I find these observations: "It is proper to add that the right to enjoin an individual, even though a State official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court, and an injunction against a State court would be a violation *of the whole scheme of our Government.* If an injunction against an individual is disobeyed, and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account. The difference between the power to enjoin an individual from doing certain things and the power to enjoin courts from proceeding in their own way to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former." If an order of the Federal court forbidding a State court or its grand jury from attempting to enforce a State enactment would be "a violation of the whole scheme of our Government," it is difficult to perceive why an order of that court, forbidding the chief law officer and all the district attorneys of a State to represent it in the courts in a particular case, and practically, in that way, closing the doors of the State court against the State, would not also be inconsistent with the whole scheme of our Government, and therefore beyond the power of the court to make.

Whether the Minnesota statutes are or are not violative of the Constitution is not, as already suggested, a question in this habeas corpus proceeding. I do not, therefore, stop to consider whether those statutes are repugnant to the Constitution upon the ground that by their necessary operation, when enforced, they will prevent the railway company from contesting their validity, or upon the ground that they are confiscatory and therefore obnoxious to the requirement of due process of law. While the argument at the bar in support of each of these propositions was confessedly of great force and persuasiveness, those points need not be now examined. I express no opinion about them. Their soundness may, however, be conceded for the purposes of this discussion. Indeed, it may be assumed for the purposes of this discussion that these State enactments are harsh and intemperate, and, in some of their features, invalid. But those questions are wholly apart from the present proceeding. If we now consider them, we must go out of our way in order to do so. We have no evidence in this proceeding as to the effect which the statutes, if enforced, would have upon the value either of the railway property or of the bonds or stocks of the railway company. The question of their validity has not been finally decided by the circuit court, and we have not before us even the evidence upon which its preliminary injunction was based. The essential and only question now before us or that need be decided is whether an order by the Federal court which prevents the State from being represented in its own courts, by its chief law officer, upon an issue involving the constitutional validity of certain State enactments, does not make a suit against the State within the meaning of the eleventh amendment. If it be a suit of that kind, then, it is conceded, the circuit court was without jurisdiction to fine and imprison the petitioner and he must be discharged, whatever our views may be as to the validity of those State enactments. This must necessarily be so unless the amendment has less force and a more restricted meaning now than it had at the time of its adoption, and unless a suit against the attorney-general of a State, in his official capacity, is not one against a State under the eleventh amendment when its determination depends upon a question of constitutional power or right under the fourteenth amendment. In that view I can not concur. In my opinion, the eleventh amendment has not been modified in the slightest degree as to its scope or meaning by the fourteenth amendment, and a suit which, in its essence, is one against the State remains one of that character and is forbidden even when brought to strike down a State statute alleged to be in violation of that clause of the fourteenth amendment forbidding the deprivation, by a State, of life, liberty, or property without due process of law. If a suit be commenced in a State court, and involves a right secured by the Federal Constitution, the way is open under our incomparable judicial system to protect that right, first, by the judgment of the State court, and ultimately by the judgment of this court, upon writ of error. But such right can not be protected by means of a suit which, at the outset, is directly or in legal effect one against the State whose action is alleged to be illegal. That mode of redress is absolutely forbidden by the eleventh amendment and can not be made legal by mere construction or by any consideration of the consequences that may follow from the operation of the statute. Parties can not, in any case, obtain redress by a suit *against the State.* Such has been the uniform ruling in this court, and it is most unfortunate that it is now declared to be competent for a Federal circuit court, by exerting its authority over the chief law officer of the State, without the consent of the State to exclude the State, in its sovereign capacity, from its own courts when seeking to have the ruling of those courts as to its powers under its own statutes. Surely the right of a State to invoke the jurisdiction of its own courts is not less than the right of individuals to invoke the jurisdiction of a Federal court. The preservation of the dignity and sovereignty of the States, within the limits of their constitutional powers, is of the last importance and vital to the preservation of our system of government. The courts should not permit themselves to be driven by the hardships, real or supposed, of particular cases to accomplish results, even if they be just results, in a mode forbidden by the fundamental law. The country should never be allowed to think that the Constitution can, in any case, be evaded or amended by mere judicial interpretation, or that its behests may be nullified by an ingenious construction of its provisions.

The importance of the question under consideration is a sufficient justification for such a reference to the authorities as will indicate the precise grounds on which this court has oftentimes proceeded when determining what is and what is not a suit against a State within the meaning of the eleventh amendment. All the cases agree in declaring the incapacity of a Federal court to exercise jurisdiction over a State as a party. But assaults upon the eleventh amendment have oftenest been made in cases in which the effort has been, without making the State a formal party, to control the acts of its officers and agents, by such orders directed to them as will accomplish by indirection the same results that could be accomplished by a suit directly against the State if such a suit were possible. It will be well to look at some of the principal adjudged cases.

The general question was examined in Cunningham *v.* Macon and Brunswick Railroad Company (109 U. S., 446–451), where the court said that it was conceded in all the cases, and "may be accepted as a point of departure unquestioned, that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution." The court has not in any case departed from this constitutional principle. In Pennoyer *v.* McConnaughy (140 U. S., 1, 9) it said that "this immunity of a State from suit is absolute and unqualified, and the constitutional provision securing it is not to be so construed as to place the State within the reach of the process of the court. Accordingly it is equally well settled that a suit against the officers of a State to compel them to do the acts which constitute a performance by it of its contracts is, in effect, a suit against the State itself." In Cunningham *v.* Macon and Brunswick Railroad Company, just cited, the distinction was drawn between a suit in which the State is the real party in interest, although not technically a party on the record, and one in which "an individual is sued in tort for some act injurious to another in regard to person or property, to which his defense is that he has acted under the orders of the government," in which last case, the court observed, the defendant "is not sued *as, or because he is,* the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he *asserts* authority as such officer." Let it not be forgotten that the

defendant Young was sued not as an individual or because he had any personal interest in these matters, but *as, and solely because he is,* an officer of the State charged with the performance of certain public duties.

In Hagood *v.* Southern (117 U. S., 52, 67, 68), which involved the validity of certain scrip alleged to have been issued by the State of South Carolina, it appeared that the State having denied its obligation to pay, the plaintiff sought relief by simply suing certain State officers, as such, without making the State a formal party. The court said: "These suits are accurately described as bills for the specific performance of a contract between the complainants and the State of South Carolina, who are the only parties to it. But to these bills the State is not in name made a party defendant, though leave is given to it to become such if it chooses; and, except with that consent, it could not be brought before the court and made to appear and defend. And yet it is the actual party to the alleged contract the performance of which is decreed, the one required to perform the decree, and the only party by whom it can be performed. Though not nominally a party to the record, it is the real and only party in interest, the nominal defendants being the officers and agents of the State, having no personal interest in the subject-matter of the suit and defending *only as representing the State.* And the things required by the decrees to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the State. The State is not only the real party to the controversy, but the real party against which relief is sought by the suit, and the suit is, therefore, substantially within the prohibition of the eleventh amendment to the Constitution of the United States, which declares that 'the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State.'" Again: "If this case is not within the class of those forbidden by the constitutional guaranty to the States of immunity from suits in Federal tribunals, it is difficult to conceive the frame of one which would be. If the State is named as a defendant, it can only be reached either by mesne or final process through its officers and agents, and a judgment against it could neither be obtained nor enforced, except as the public conduct and government of the ideal political body called a State could be reached and affected through its official representatives. A judgment against these latter, in their official and representative capacity, commanding them to perform official functions on behalf of the State according to the dictates and decrees of the court, is, if anything can be, a judicial proceeding against the State itself. If not, it may well be asked, What would constitute such a proceeding? In the present cases the decrees were not only against the defendants *in their official capacity,* but, that there might be no mistake as to the nature and extent of the duty to be performed, also against their successors in office." Is it to be said that an order requiring the attorney-general of a State to perform certain official functions on behalf of the State is a suit against the State, while an order forbidding him, *as attorney-general,* not to perform an official function on behalf of the State is not a suit against the State?

The leading case upon the general subject, and one very similar in many important particulars to the present one, is In re Ayers. (123 U. S., 443, 496, 497, 505.) The facts in that case were briefly these: The legislature of Virginia, in 1887, passed an act which holders of sundry bonds and tax-receivable coupons of that Commonwealth alleged to be in violation of their rights under the Constitution of the United States. They instituted a suit in equity in the circuit court of the United States against the attorney-general and auditor of Virginia, and against the treasurers and Commonwealth attorneys of counties, cities, and towns in Virginia, the relief asked being a decree enjoining and restraining the said State officers, and each of them, from bringing or commencing any suit provided for by the above act of 1887, or from doing anything to put that act into operation. The circuit court entered an order enjoining the attorney-general of Virginia and each and all the State officers named "from bringing or commencing any suit against any person who has tendered the State of Virginia tax-receivable coupons in payment of taxes due to said State, as provided for and directed by the act of the legislature of Virginia, approved May 12, 1887." Subsequently the circuit court of the United States was informed that the attorney-general of Virginia had disobeyed its order of injunction. Thereupon that officer was ruled to show cause why he should not be fined and imprisoned. He responded to the rule, admitting that after being served with the injunction he had instituted a suit, in the State circuit court, against the Baltimore and Ohio Railroad Company to recover taxes due the State, and alleging "that he instituted the said suit because he was thereunto required by the act of the general assembly of Virginia aforesaid, and because he believed this court had no jurisdiction whatever to award the injunction violated." He disclaimed any intention to treat the court with disrespect, and stated that he had been actuated alone by the desire to have the law properly administered. He was, nevertheless, adjudged guilty of contempt, was required forthwith to dismiss the suit he had brought, was fined $500 for contempt of court, and committed *to the custody of the marshal* until the fine was paid and until he purged himself of his contempt *by dismissing the suit in the State court.* The attorney-general then applied directly to this court for a writ of habeas corpus, which was granted, and upon hearing he was released by this court from custody. The order for his discharge recited that the suit in which the injunctions were granted was "in substance and in law a suit against the State of Virginia," and "within the prohibition of the eleventh amendment to the Constitution;" that it was one "to which the judicial power of the United States does not extend;" that the circuit court was without jurisdiction to entertain it; that all its proceedings in the exercise of jurisdiction were null and void; that it had no authority or power to adjudge the attorney-general in contempt, and that his imprisonment was without authority of law.

In the opinion in the Ayers case the court said: "It follows, therefore, in the present case, that the personal act of the petitioners sought to be restrained by the order of the circuit court, reduced to *the mere bringing of an action in the name of and for the State against taxpayers,* who, although they may have tendered tax-receivable coupons, are charged as delinquents, can not be alleged against them as an individual act in violation of any legal or contract rights of such taxpayers." Again: "The relief sought is against the defendants, not in their individual but *in their representative capacity as officers of the State of Virginia.* The acts sought to be restrained are the bringing of suits by the State of Virginia in its own name and for its own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subject to the jurisdiction of the court by process served upon its governor and attorney-general, according to the precedents in such cases. (New Jersey *v.* New York, 5 Pet., 284, 288, 290; Kentucky *v.* Dennison, 24 How., 66, 96, 97; Rule 5 of 1884, 108 U. S., 574.) If a decree could have been rendered enjoining the State from bringing suits against its taxpayers, it would have operated upon the State *only through the officers who by law were required to represent it in bringing such suits, viz, the present defendants, its attorney-general, and the Commonwealth's attorneys for the several counties.* For a breach of such an injunction, these officers would be amenable to the court as proceeding in contempt of its authority, and would be liable to punishment thereof by attachment and imprisonment. The nature of the case, as supposed, is identical with that of the case as actually presented in the bill, with the single exception that the State is not named as a defendant. How else *can the State be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys, and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subjected to the jurisdiction of the court as an actual and real defendant?"*

Further: "The very object and purpose of the eleventh amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other States or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the members of judicial tribunals without their consent and in favor of individual interests. To secure the manifest purposes of the constitutional exemption guaranteed by the eleventh amendment requires that it should be interpreted not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover not only suits brought against a State by name, but *those also against its officers, agents, and representatives where the State, though not named as such, is nevertheless the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates.* But this is not intended in any way to impinge upon the principle which justifies suits against individual defendants, who, under color of the authority of unconstitutional legislation by the State, are guilty of *personal trespasses and wrongs,* nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, *and the act to be done or omitted is purely ministerial,* in the performance or omission of which the plaintiff has a legal interest."

It is said that the Ayers case is not applicable here, because the orders made by the Federal circuit court had for their object to compel Virginia to perform its contract with bondholders, which is not this case. But that difference between the Ayers case and this case can not affect the principle involved. The proceeding against the attorney-general of Virginia had for its object to compel, by indirection, the performance of the contract which that Commonwealth was alleged to have made with bondholders—such performance, on the part of the State, to be effected by means of orders in a Federal circuit court directly controlling the official action of that officer. The proceeding in the Perkins-Shepard suit against the attorney-general of Minnesota had for its object, by means of orders in a Federal circuit court, directed to that officer, *to control the action of that State* in reference to the enforcement of certain statutes by judicial proceedings commenced in its own courts. The relief sought in each case was to control the State *by controlling the conduct of its law officer, against its will.* I can not conceive how the proceeding against the attorney-general of Virginia could be deemed a suit against that State, and yet the proceeding against the attorney-general of Minnesota is not to be deemed a suit against Minnesota, when the object and effect of the latter proceeding was, beyond all question, to shut that State entirely out of its own courts, and prevent it through its law officer from invoking their jurisdiction in a special matter of public concern, involving official duty, about which the State desired to know the views of its own judiciary. In my opinion the decision in the Ayers case determines this case for the petitioner.

More directly in point, perhaps, for the petitioner, Young, is the case of Fitts *v.* McGhee (172 U. S., 516, 528, 529, 530). That suit was brought by the receivers of a railroad company against the governor and attorney-general of Alabama. Its object was to prevent the enforcement of the provisions of an Alabama statute prescribing the maximum rates of toll to be charged on a certain bridge across the Tennessee River. The statute imposed a penalty for each time that the owners, lessees, or operators of the bridge demanded or received any higher rate of toll than was prescribed by it. The relief asked was an injunction prohibiting the governor and attorney-general of the State and all other persons from instituting any proceeding against the complainants, or either of them, to enforce the statute. An injunction, as prayed for, was granted. In the progress of the cause the solicitor of the district in which the case was pending was made a defendant and the injunction was extended to him. By amended pleadings it was made to appear that the tollgate keepers at the public crossing of the bridge were indicted for collecting tolls in violation of the statute. In the progress of the cause the plaintiffs dismissed the case as to the State, and the cause was discontinued as to the governor. But the case was heard upon the motion to dismiss the bill upon the ground that the suit was one against the State in violation of the Constitution of the United States.

After stating the principles settled in the Ayers case and in other cases this court said: "If these principles be applied in the present case there is no escape from the conclusion that, although the State of Alabama was dismissed as a party defendant, this suit against its officers is really one against the State. *As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings,* in execution of the statute of February 9, 1895, *is one which restrains the State itself, and the suit is consequently as much against the State as if the State were named as a party defendant on the record.* If the individual defendants only held possession or were about to take possession of, or to commit any trespass upon, any property belonging to or under the control of the plaintiffs, in violation of the latter's constitutional rights, they could not resist the judicial determination, in a suit against them, of the question of the right to such possession by simply asserting that they held or were entitled to hold the property in their capacity as officers of the State. In the case supposed, they would be compelled to make good

the State's claim to the property, and could not shield themselves against suit because of their official character. (Tindal *v.* Wesley, 167 U. S., 204, 222.) No such case is before us." Again, in the same case: "It is to be observed that neither the attorney-general of Alabama nor the solicitor of the eleventh judicial circuit of the State appear to have been charged by law with any special duty in connection with the act of February 9, 1895. In support of the contention that the present suit is not one against the State, reference was made by counsel to several cases, among which were Poindexter *v.* Greenhow (114 U. S., 270), Allen *v.* Baltimore and Ohio Railroad (114 U. S., 311), Pennoyer *v.* McConnaughy (140 U. S., 1), In re Tyler (149 U. S., 164), Reagan *v.* Farmers' Loan and Trust Company (154 U. S., 362, 388), Scott *v.* Donald (165 U. S., 58), and Smyth *v.* Ames (169 U. S., 466). Upon examination it will be found that the defendants in each of those cases were officers of the State, especially charged with the execution of a State enactment alleged to be unconstitutional, but under the authority of which, it was averred, they were committing or were about to commit *some specific wrong or trespass* to the injury of the plaintiff's rights. There is a wide difference between a suit against individuals, holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act a wrong or trespass, and a *suit against officers of a State merely to test the constitutionality of a State statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State.* In the present case, as we have said, neither of the State officers named held any special relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see its enforcement. If, because they were law officers of the State, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and attorney-general, based upon the theory that the former as the executive of the State was, in a general sense, charged with the execution of all its laws, and the latter, as attorney-general, might represent the State in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which can not be applied to the States of the Union consistently with the fundamental principle that they can not, without their assent, be brought into any court at the suit of private persons. If their officers commit acts of trespass or wrong to the citizen, they may be individually proceeded against for such trespasses or wrong. Under the view we take of the question, the citizen is not without effective remedy when proceeded against under a legislative enactment void for repugnancy to the supreme law of the land; for, whatever the form of proceeding against him, he can make his defense upon the ground that the statute is unconstitutional and void. And that question can be ultimately brought to this court for final determination." I am unable to distinguish that case, in principle, from the one now before us. The Fitts case is not overruled, but is, I fear, frittered away or put out of sight by unwarranted distinctions.

Two cases in this court are much relied on to support the proposition that the Perkins-Shepard suit in the circuit court is not a suit against the State. I refer to Reagan *v.* Farmers' Loan and Trust Company (154 U. S., 362) and Smyth *v.* Ames (169 U. S., 466, 472). But each of those cases differs in material respects from the one instituted by Perkins and Shepard in the court below. In the Reagan case it appears that the very act, under which the railroad commission proceeded, authorized the railroad company, or any interested party, if dissatisfied with the action of the commission in establishing rates, to bring suit against that commission in any court, in a named county, with right to appeal to a higher court. This court when combating the suggestion that only the State court had jurisdiction to proceed against the commission, and give relief in respect of the rates it established, said: "It may be laid down as a general proposition that, whenever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal courts to maintain a like defense. A State can not tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the State to protect property rights, a citizen of another State may invoke the jurisdiction of the Federal courts. * * * It comes, therefore, within the very terms of the act. It can not be doubted that a State, like any other government, can waive exemption from suit." The declaration of the court in the Reagan case, that that suit was not, within the true meaning of the eleventh amendment, to be regarded as a suit against the State, must therefore be taken in connection with the declaration in the same case that the State having consented that the commission might be sued in one of its own courts, in respect of the rates established by the statute, must be taken to have waived its immunity from suit in the circuit court of the United States sitting in Texas. In Smyth *v.* Ames, above cited, which was a suit in a circuit court of the United States, involving the constitutional validity of certain rates established for railroads in Nebraska, it appeared that the statute expressly authorized any railroad company claiming that the rates were unreasonable to bring an action *against the State* before the Supreme Court in the name of the railroad company or companies bringing the same. Thus the State of Nebraska waived its immunity from suit, and having authorized a suit against itself in one of its courts, in respect of the rates there in question, it could not, according to the decision in the Reagan case, deny its liability to like suit in a court of the United States. It is true that this court, in its opinion in Smyth *v.* Ames, did not lay any special stress on the fact that Nebraska, by the statute, agreed that it might be sued, but it took especial care in its extended statement of the case to bring out that fact. Its silence on that point is not extraordinary, in view of the fact, as appears from the opinion of this court, that the question whether that suit was to be deemed one against the State was not discussed at the bar by the Nebraska State board. We there quoted from the Reagan case these words: "Whenever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal courts to maintain a like defense. A State can not tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts." That the Reagan and Smyth cases did not go as far as is now claimed for them is made clear by the later case of Fitts *v.* McGhee, already referred to, in which the doctrines of In re Ayers were reaffirmed and applied.

We may refer in this connection to Gunter *v.* Atlantic Coast Line (200 U. S., 273, 291), in which case one of the points made was that the circuit court of the United States had no power to restrain the attorney-general of South Carolina and the counsel associated with him from prosecuting in the State courts actions authorized by the laws of the State, and hence that the court erred in awarding an injunction against said officers. This court said: "Support for the proposition is rested upon the terms of the eleventh amendment and the provisions of section 720 of the Revised Statutes, forbidding the granting of a writ by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. The soundness of the doctrine relied upon is undoubted. (In re Ayers, 123 U. S., 443; Fitts *v.* McGhee, 172 U. S., 516.) The difficulty is that the doctrine is inapplicable to this case. Section 720 of the Revised Statutes was originally adopted in 1793, whilst the eleventh amendment was in process of formation in Congress for submission to the States, and long, therefore, before the ratification of that amendment. The restrictions embodied in the section were, therefore, but a partial accomplishment of the more comprehensive result effectuated by the prohibitions of the eleventh amendment. Both the statute and the amendment relate to the power of courts of the United States to deal, against the will and consent of a State, with controversies between it and individuals. None of the prohibitions, therefore, of the amendment or of the statute relate to the power of a Federal court to administer relief in causes where jurisdiction as to a State and its officers has been acquired *as a result of the voluntary action of the State in submitting its rights to judicial determination.* To confound the two classes of cases is but to overlook the distinction which exists between the power of a court to deal with a subject over which it has jurisdiction and its want of authority to entertain a controversy as to which jurisdiction is not possessed."

Counsel for the railway company placed some reliance on Pennoyer *v.* McConnaughy (140 U. S., 1, 18), in which the previous cases on the general subject of suits against the States were classified. That case was a suit in equity against certain parties "who, under the constitution of Oregon, as governor, secretary of state, and treasurer of that State, comprised the board of land commissioners of that State, to restrain and enjoin them from selling and conveying a large amount of land in that State, to which the plaintiff asserted title." That suit, in view of the nature of the relief asked, and of the relations of the defendants to the matters involved, was held not to be one against the State within the meaning of the eleventh amendment. But after a review of the facts the court, *as explanatory of the conclusion reached by it,* took especial care to observe: "In this connection it must be borne in mind that this suit is not nominally against the governor, secretary of state, and treasurer, *as such officers,* but against them collectively, as the board of land commissioners." The present suit is, in terms, against Young "as attorney-general of Minnesota," and the decree was sought against him, as such officer, not against him individually, or as a mere administrative officer charged with certain duties.

One of the cases cited in support of the decision now rendered is Missouri, Kansas and Texas Railway Company *v.* Missouri Railroad and Warehouse Commissioners (183 U. S., 53, 58, 59). But although that particular suit was held not to be one against the State, the case, in respect of the principles announced by the court, is in harmony with the views I have expressed. For the court there says: "Was the State the real party plaintiff? It was an early day held by this court, construing the eleventh amendment, that in all cases where jurisdiction depends on the party, it is the party named in the record. (Osborne *v.* United States Bank, 9 Wheat., 738.) But that technical construction has yielded to one more in consonance with the spirit of the amendment, and in In re Ayres (123 U. S., 443) it was ruled upon full consideration that the amendment covers not only suits against a State by name *but those also against its officers, agents, and representatives where the State, though not named as such, is nevertheless the only real party against which in fact the relief is asked, and against which the judgment or decree effectively operates.* And that construction of the amendment has since been followed." In the present case the State, although not named on the record as a party, is the real party whose action it is sought to control.

There are other cases in this court in which the scope and meaning of the eleventh amendment were under consideration, but they need not be cited, for they are well known. They are all cited in In re Ayers (123 U. S., 443, 500). "The vital principle in all such cases," this court said in the Ayers case, "is that the defendants, though professing to act as officers of the State, are threatening a violation of the personal or property rights of the complainant, for which they are personally and individually liable," or cases in which the officer sued refused to perform a purely ministerial duty, about which he had no discretion and in the performance of which the plaintiff had a direct interest. The case before us is altogether different. The statutes in question did not impose upon the attorney-general of Minnesota any special duty to see to their enforcement. In bringing the mandamus suit he acted under the general authority inhering in him as the chief law officer of his State. He could not become personally liable to the railway company *simply because of his bringing the mandamus suit.* The attorney-general stated that all he did, or contemplated doing, was to bring the mandamus suit. The mere bringing of such a suit could not be alleged against him as an individual in violation of any legal right of the railway company or its shareholders. (In re Ayers, 123 U. S., 443, 496.) The plaintiffs recognized this fact and hence did not proceed in their suit upon the ground that the defendant was individually liable. They sued him only as attorney-general and sought a decree against him in his official capacity, not otherwise.

Some reference has been made to Ex parte Royall (117 U. S., 241) and other cases that affirm the authority of a Federal court, under existing statutes, to discharge upon habeas corpus from the custody of a State officer one who is held in violation of the Federal Constitution for an alleged crime against a State. Those cases are not at all in point in the present discussion. Such a habeas corpus proceeding is ex parte, having for its object only to inquire whether the applicant for the writ is illegally restrained of his liberty. If he is, then the State officer holding him in custody is a trespasser, and can not defend the wrong or tort committed by him by pleading his official character. The power in a Federal court to discharge a person from the custody of a trespasser may well exist, and yet the court have no power in a suit before it, by an order directed against the attorney-general of a State, as such, to prevent the State from being represented by that officer as a litigant in one of its own courts. The former cases, it may be argued, come within the decisions which hold that a suit which only seeks to prevent or restrain a trespass upon property or person by one who happens to be a State officer, but is proceeding in viola-

tion of the Constitution of the United States, is not a suit against a State within the meaning of the eleventh amendment, but a suit against the trespasser or wrongdoer. But the authority of the Federal court to protect one against a trespass committed or about to be committed by a State officer in violation of the Constitution of the United States is very different from the power now asserted, and recognized by this court as existing, to shut out a sovereign State from its own courts by the device of forbidding its attorney-general, under the penalty of fine and imprisonment, from appearing in such courts in its behalf. *The mere bringing of a suit on behalf of a State by its attorney-general* can not, this court has decided in the Ayers case, make that officer a trespasser and individually liable to the party sued. To enjoin him from representing the State in such suit is therefore, for every practical or legal purpose, to enjoin the State itself. This court in the Debs case (158 U. S., 564, 584) said: "Every government, entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligation which it is under to promote the interest of all and to prevent the wrongdoing of one resulting in injury to the general welfare is often of itself sufficient to give it a standing in court. This proposition in some of its relations has heretofore received the sanction of this court." If there be one power that a State possesses which ought to be deemed beyond the control, in any mode, of the National Government or of any of its courts, it is the power *by judicial proceedings* to appear in its own courts, by its law officer or by attorneys, and seek the guidance of those courts in respect of matters of a justiciable nature. If the State court, by its judgment in such a suit, should disregard the injunctions of the Federal Constitution that judgment would be subject to review by this court upon writ of error or appeal.

It will be well now to look at the course of decisions in other Federal courts.

Attention is first directed to Arbuckle *v.* Blackburn (113 Fed. Rep., 616, 622), which was a suit in equity, one of the principal objects of which was to restrain the enforcement of an act of the Ohio legislature relating to food products, particularly of a named coffee in which the plaintiffs were interested. The circuit court of appeals held that the bill was properly dismissed, saying, among other things: "What, then, is the object of the injunction sought in this case? It is no more or less than to restrain the officer of the State from bringing prosecutions for violations of an act which said officer is expressly charged to enforce in the only way he is authorized to proceed—by bringing criminal prosecutions in the name of the State. This is virtually to enjoin the State from proceeding through its duly qualified and acting officers. If the food commissioner may be enjoined from instituting such prosecutions, why may not the prosecuting attorney, or any officer of the State charged with the execution of the criminal laws of the State? While the State may not be sued, if the bill can be sustained against its officers, it is as effectually prevented from proceeding to enforce its laws as it would be by an action directly against the State. This view of the case, in our judgment, is amply sustained by the cases above cited, and by the latter case of Fitts *v.* McGhee (172 U. S., 516). In so far as this action seeks an injunction against the respondent from proceeding to enforce by prosecution the provisions of the statutes of Ohio above cited, the courts of the United States are deprived of jurisdiction by the eleventh amendment to the Constitution."

In Union Trust Company *v.* Stearns (119 Fed. Rep., 790, 791, 792, 795) the circuit court of the United States for the district of Rhode Island had occasion to consider the scope of the eleventh amendment. The case related to a statute regulating the hours of labor of certain employees of street railways and imposing a fine for a violation of its provisions. The court upon an elaborate review of all the cases in this court dismissed the action. The defendants Stearns and Greenough were, respectively, the attorney-general and assistant attorney-general of the State. They were not named in the act nor charged with any special duty in connection therewith. The court said: "The purpose of the present bill, in substance and effect, is to enjoin the State of Rhode Island from the enforcement of a penal statute. Indictments under the act are brought in the name and on behalf of the State for the protection of the State. These defendants, the attorney-general and his assistant, merely represent the State in such proceedings. They are simply the officers and agents of the State. It is not as individuals, but solely by virtue of their holding such offices, that they prefer and prosecute indictments in the name of the State. A State can only act or be proceeded against through its officers. If a decree could be entered against the State of Rhode Island enjoining prosecutions under this act, it could only operate against the State through enjoining these defendants. An order restraining the attorney-general and his assistant from the enforcement of this statute is an order restraining the State itself. The present suit, therefore, is as much against the State of Rhode Island as if the State itself were named a party defendant." After referring to In re Ayers and Fitts *v.* McGhee, and upon a review of the cases, the court proceeded: "The defendants Stearns and Greenough hold no special relation to the act of June 1, 1902. They are not specially charged with its execution. They are not thereby constituted a board or commission with administrative powers, nor are they as individuals, and apart from the official authority under which they act, threatening to seize the property of the complainant or to commit any wrong or trespass against its personal or property rights. They have no other connection with this statute than the institution of formal judicial proceedings for its enforcements in the courts of the State in the name and behalf of the State. Upon reason and authority the present bill is a suit against the State of Rhode Island, within the meaning of the eleventh amendment to the Constitution of the United States."

In Morenci Copper Company *v.* Freer (127 Fed. Rep., 199, 205), which was an action in equity to restrain and inhibit the defendant, in his official capacity as attorney-general of West Virginia, from proceeding to institute an action in the State court for forfeiture of the charter of the plaintiff corporation for a failure to pay a license tax imposed by a State statute, and which statute was alleged to be in violation of the Federal Constitution, the circuit court reviewed the decision of this court upon the question as to what and what were not suits against the State. The circuit court held that it had no jurisdiction of the case, saying: "But it may be said, if the court holds that no remedy of this sort will lie in the circuit court of the United States to prevent this breach of a contract by the State of West Virginia by means of the machinery of a law violative of the Constitution of the United States, how are the rights of corporations to be preserved? The answer is that such alleged unconstitutionality is matter of defense to any suit brought for the forfeiture of complainant's charter, and could be set up as an answer and defense to any bill brought for that purpose, and, if the highest court of the State ruled adversely to that contention, appeal would lie to the Supreme Court of the United States. Or the case can be removed to the circuit court of the United States if it presents a case arising under the Constitution or laws of the United States."

A well-considered case is that of Western Union Telegraph Company *v.* Andrews (154 Fed. Rep., 95, 107). In that case the telegraph company sought by bill to enjoin the prosecuting attorneys of the various judicial circuits of Arkansas from instituting any proceeding for penalties for its failure or refusal to comply with the provisions of an act of the legislature of Arkansas relating to foreign corporations doing business in that State and fixing fees, etc. The bill charged that the various prosecuting attorneys would, unless restrained, institute numerous actions for the recovery of the penalities prescribed by the act, which was no less than $1,000 for each alleged violation. The defense was, among other things, that the action was one against the State, and therefore prohibited by the Constitution. After a careful review of the adjudged cases in this court and in the subordinate Federal courts the circuit court held the action to be one against the State, forbidden by the eleventh amendment, saying, among other things: "The allegations in the bill show that this is an attempt to prevent the State of Arkansas, through its officers, who by its laws are merely its attorneys, to represent it in all legal actions in its favor or in which it is interested, from instituting and prosecuting suits for the recovery of penalties incurred for alleged violation of its laws, actions which can only be instituted in the name of the State and for its use and benefit."

Upon the fullest consideration and after a careful examination of the authorities, my mind has been brought to the conclusion that no case heretofore determined by this court requires us to hold that the Federal circuit court had authority to forbid the attorney-general of Minnesota from representing the State in the mandamus suit in the State court or to adjudge that he was in contempt and liable to be fined and imprisoned simply because of his having, as attorney-general, brought that suit for the State in one of its courts. On the contrary, my conviction is very strong that, if regard be had to former utterances of this court, the suit of Perkins and Shepard in the Federal court, in respect of the relief sought therein against Young, in his official capacity as attorney-general of Minnesota, is to be deemed—under the Ayers and Fitts cases particularly—a suit against the State of which the circuit court of the United States could not take cognizance without violating the eleventh amendment of the Constitution. Even if it were held that suits to restrain the instituting of actions directly to recover the prescribed penalties would not be suits against the State, it would not follow that we should go further and hold that a proceeding under which the State was, in effect, denied access, by its attorney-general, to its own courts, would be consistent with the eleventh amendment. A different view means, as I think, that although the judicial power of the United States does not extend to any suit expressly brought against a State by a citizen of another State without its consent or to any suit the legal effect of which is to tie the hands of the State, although not formally named as a party, yet a circuit court of the United States, in a suit brought against the attorney-general of a State, may, by orders directed specifically against that officer, control, entirely control, by indirection, the action of the State itself in judicial proceedings in its own courts involving the constitutional validity of its statutes. This court has heretofore held that that could not be done and that such a result would, for most purposes, practically obliterate the eleventh amendment and place the States, in vital particulars, as absolutely under the control of the subordinate Federal courts as if they were capable of being directly sued. I put the matter in this way, because to forbid the attorney-general of a State (under the penalty of being punished as for contempt) from representing his State in suits of a particular kind, in its own courts, is to forbid the State itself from appearing and being heard in such suits. Neither the words nor the policy of the eleventh amendment will, under our former decisions, justify any order of a Federal court the necessary effect of which will be to exclude a State from its own courts. Such an order attended by such results can not, I submit, be sustained consistently with the powers which the States, according to the uniform declarations of this court, possess under the Constitution. I am justified, by what this court has heretofore declared, in now saying that the men who framed the Constitution and who caused the adoption of the eleventh amendment would have been amazed by the suggestion that a State of the Union can be prevented by an order of a subordinate Federal court from being represented by its attorney-general in a suit brought by it in one of its own courts; and that such an order would be inconsistent with the dignity of the States as involved in their constitutional immunity from the judicial process of the Federal courts (except in the limited cases in which they may constitutionally be made parties in this court), and would be attended by most pernicious results.

I dissent from the opinion and judgment.

Mr. NELSON. I move to lay the amendment of the Senator from Nebraska [Mr. BURKETT] on the table.

The VICE-PRESIDENT. The Senator from Minnesota moves to lay the amendment offered by the Senator from Nebraska [Mr. BURKETT] on the table.

The motion was agreed to.

The VICE-PRESIDENT. The question is on agreeing to the amendment reported by the Committee on the Judiciary.

The amendment was agreed to.

The bill was reported to the Senate as amended.

Mr. GORE. Mr. President, I desire to offer an amendment to the pending bill. On page 2, line 18, after the word "thereof," I move to strike out all the remainder of the bill.

The VICE-PRESIDENT. The amendment proposed by the Senator from Oklahoma is not in order. The Senate, as in Committee of the Whole, agreed to the amendment; but, without objection, the Chair will regard the bill as being still in Committee of the Whole and open to amendment. The amendment will be read.

The SECRETARY. On page 2, line 18, after the word "thereof," strike out the remainder of the substitute bill, in the following words:

Upon the ground of unconstitutionality of the statute, unless the application for the same shall be presented to a circuit judge and shall

be heard and determined, upon issue made and proof taken by affidavit or otherwise, by three judges, of whom two shall be circuit judges, and the third may be either a circuit or a district judge, and unless a majority of said three judges shall concur in granting such application. Whenever such application, as aforesaid, is presented to a circuit judge he shall immediately call to his assistance, to hear and determine the application, one circuit judge and one district judge or another circuit judge. Said application shall not be heard and determined until five days' notice of the hearing has been given to the governor and attorney-general of the State and such other persons as may be defendants in the suit: *Provided*, That if a majority of said judges are of the opinion, at the time notice of said hearing is given as aforesaid, that irreparable loss and damage would result to the applicant unless a temporary restraining order, pending the period of the required notice, is granted, a majority of said judges may grant such order, but the same shall only remain in force until the hearing and determination of the application, upon due notice as aforesaid, has taken place. That an appeal may be taken directly to the Supreme Court of the United States from any order or decree granting or denying, after notice and hearing, a temporary or interlocutory injunction or restraining order in such case; and the hearing of such appeal shall take precedence over all other cases except those of a similar character and criminal cases.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Oklahoma [Mr. GORE].

The amendment was rejected.

Mr. BURKETT. May I ask what was done with the amendment that I offered?

The VICE-PRESIDENT. The amendment was laid upon the table on the motion of the senior Senator from Minnesota [Mr. NELSON].

Mr. BURKETT. I understand that it is too late to ask for a yea-and-nay vote on my amendment.

The VICE-PRESIDENT. It is too late.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

EMPLOYMENT OF CHILD LABOR.

The VICE-PRESIDENT. The Calendar under Rule VIII is in order. The first bill on the Calendar will be stated.

The SECRETARY. A bill (S. 4812) to regulate the employment of child labor in the District of Columbia.

Mr. NELSON. The Senator from West Virginia [Mr. SCOTT] is interested in the bill, and in his absence I will ask to have it passed over.

The VICE-PRESIDENT. The bill will be passed over without prejudice at the request of the Senator from Minnesota.

NATIONAL FORESTS.

The bill (S. 4825) for acquiring national forests in the Southern Appalachian Mountains and White Mountains was announced as the next in order.

Mr. BRANDEGEE. I desire to state that the senior Senator from Colorado [Mr. TELLER] desires to speak upon the bill. He informed me that he is indisposed, and he asked me to let the bill go over to some other day.

The VICE-PRESIDENT. Without objection, the bill will be passed over without prejudice at the request of the Senator from Connecticut.

OMNIBUS CLAIMS BILL.

Mr. McCREARY I desire to ask what was done with House bill 15372, known as the "omnibus claims bill?" It was reported more than a month ago, and it is a very important bill. It contains many items that persons in various States are interested in; a number of them are items my constituents are interested in. I desire to know why it is that we propose to pass over that bill.

The VICE-PRESIDENT. The bill will be announced by title.

The SECRETARY. A bill (H. R. 15372) for the allowance of certain claims reported by the Court of Claims under the provisions of the acts approved March 3, 1883, and March 3, 1887, and commonly known as the Bowman and Tucker acts.

Mr. SMOOT. I will state to the Senator from Kentucky that the reason why the bill has not been taken up for consideration is that the chairman of the committee, the Senator from Oregon [Mr. FULTON] is absent from the city, and before leaving he requested that the bill be not taken up for consideration until his return. I understand that the chairman will be here about the 21st or the 22d of this month.

I wish also to say that I do not think it would hasten the passage of the bill in any way by pressing it at this time. I therefore ask that the bill may go over without prejudice.

Mr. McCREARY. I have no desire whatever to press the consideration of the bill, but as it was reported by the Committee on Claims more than a month ago, I desired to know why it was not acted upon when it was reached. The explanation of the Senator from Utah that the chairman of the committee [Mr. FULTON] will be here in a few days is entirely satisfactory to me.

The VICE-PRESIDENT. Without objection, the bill will go over without prejudice at the request of the Senator from Utah.

SUSPENSION OF COMMODITY CLAUSE.

The joint resolution (S. R. 74) suspending the commodity clause of the present interstate-commerce law was announced as the next business in order on the Calendar.

Mr. NELSON. In the absence of the chairman of the Committee on Interstate Commerce [Mr. ELKINS], who reported the bill, I ask that it be passed over.

The VICE-PRESIDENT. It is so ordered.

RECLAMATION OF SWAMP AND OVERFLOWED LANDS.

The VICE-PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which is Senate bill 4855.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 4855) appropriating the receipts from the sale and disposal of public lands in certain States to the construction of works for the drainage or reclamation of swamp and overflowed lands belonging to the United States, and for other purposes.

Mr. BACON. I move to strike out the fifth and sixth sections of the bill.

The VICE-PRESIDENT. The Senator from Georgia proposes an amendment, which will be read by the Secretary.

The SECRETARY. Strike out all of sections 5 and 6.

Mr. FLINT. I move to lay the amendment on the table.

Mr. BACON. I ask, before the motion is put, that the sections be read from the desk.

The VICE-PRESIDENT. The Secretary will read the sections proposed to be stricken out.

The Secretary read as follows:

SEC. 5. That where there are lands in any State not owned or held by the United States which are swamp or overflowed lands, and it shall be made to appear to the Secretary of the Interior that reclamation works by drainage can be advantageously constructed and maintained by local authority under the laws of such State, and that the drainage of such lands is feasible and conducive to public health and the general welfare, the Secretary of the Interior, in his discretion, is hereby authorized, under such rules and regulations as he may prescribe, to loan out of the drainage fund to such State or to any municipality of such State, corporation, or drainage district authorized by the laws thereof to construct and maintain such improvements the funds necessary to construct the same, in order that such lands may be drained and reclaimed. Such loan shall be upon the bonds of such State or a municipality, corporation, or drainage district thereof issued under the laws of such State, secured by a first and paramount lien upon the land benefited by the improvement, shall run not exceeding ten years, the same to be due in installments to be determined by the Secretary of the Interior. Before granting such a loan the Secretary of the Interior shall require that the land proposed to be reclaimed shall be subdivided into lots of an area satisfactory to the Secretary of the Interior not to exceed a quarter section and held for sale for a prescribed period to actual settlers, at a price to be fixed by him and upon such terms and conditions as he may prescribe, to the end that such reclaimed land may eventually be occupied by actual settlers and home builders. When any loan under this act is repaid the amount shall be put into the drainage fund and may be again loaned the same as the original sum: *Provided*, That any drainage project covered by said bonds shall be constructed, operated, and paid for under the same conditions and regulations, so far as applicable, as are required and imposed upon drainage projects constructed and operated by the Secretary of the Interior under sections 2, 3, and 4 hereof. Any private corporation seeking to obtain the benefits of this section must first show to the satisfaction of the Secretary of the Interior that such corporation is empowered to act under this section.

SEC. 6. That the Secretary of the Interior is hereby authorized to enter into such contracts as he may deem advisable with any persons or private or public corporations or States for carrying into effect the provisions of this act or to assist or cooperate in the drainage of lands, and may acquire by gift or grant land or other property or rights or securities, and shall be authorized to sell, lease, or dispose of lands acquired or reserved under the provisions of this act or of any rights, property, or securities so received.

Mr. HALE. Mr. President, let me ask the Senator in charge of the bill, before he insists on his motion to table the amendment of the Senator from Georgia, to reflect that there has been no opportunity to debate these sections. They are very remarkable sections. They propose to extend the power of the Government into a domain which it has never yet invaded. They excite not only attention, but opposition, and it has been the practice, almost a rule, of the Senate that opportunity shall be given for legitimate debate upon any subject-matter.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maine yield to the Senator from California?

Mr. HALE. Certainly.

Mr. FLINT. I have no desire to stop debate upon the amendment of the Senator from Georgia. No one here seemed to desire to discuss the amendment. I asked the Senator from Georgia this morning if he desired to further discuss the bill and I understood him to say that he did not. I put it in the form of a motion to lay the amendment on the table, so as to dispose of the matter. If anyone desires to debate the bill, either these sections or any other section, I do not care to shut him off, and I will be very glad to withdraw the motion.

Mr. HALE. That is entirely in conformity to what has been the usage, and the good usage, of the Senate.

The VICE-PRESIDENT. The Senator from California withdraws his motion to lay on the table the amendment of the Senator from Georgia.

Mr. HALE. The rule of the Senate and the practice of the Senate require the disposition of a matter after it has been debated, and that has been the defense of the Senate against the attempt at different times to incorporate into our rules such proceedings as characterize other bodies. The previous question—what they call in England the cloture—we have always resisted, upon the theory that after due debate upon any question if the Senate desires to pass any measure it always passes it.

We had a marked instance last week on the employers' liability bill. Without any previous question, without any rule that prohibits debate after an entire day spent in its consideration, with debate pro and con upon different amendments, it became apparent that the Senate desired to pass the bill unamended, and at 6 o'clock all opposition closed—not in the minds of members, for it was not a perfect bill. It was very far from a perfect bill, but it had become established in the minds of the Senate by the debate which had taken place that the Senate desired to pass the bill unamended, and it passed without even a division or a vote by yeas and nays.

I felt myself at the time that that was a remarkable tribute to the safety and the wisdom of our rules and our practice. It showed that we do not need arbitrary methods for the purpose of enforcing votes upon measures, but that the good sense of the Senate will always prevail. That is why I appealed to the Senator, who is always responsive to a reasonable appeal, that upon this matter, where Senators are divided, until fair debate is had upon the propositions involved in these two sections the Senator should not seek to foreclose consideration by moving to lay the amendment upon the table, and the Senator very readily acceded to that.

There are provisions in the bill that I look upon as being great departures in legislation, to which I can not, for one, agree; but if the Senate, after reasonable debate, wants the bill passed, the Senator from California will get the bill passed. There is a sense of fairness in the minds of Senators that will prevail, as it always has prevailed. I am very glad that the Senator has withdrawn for the present his motion to lay the amendment on the table.

Mr. McCUMBER. The Senator from Georgia moved to strike out the two sections. I can see some reason myself for striking out section 6, but I should like to have the Senator from Georgia explain his reasons for eliminating section 5.

Mr. BACON. Mr. President, before replying directly to the inquiry of the Senator from North Dakota, I wish to say, in response to the statement made by the Senator from California that he had approached me to know whether I desired to discuss the bill, that that would rather imply that I stood as the special opponent of the bill or that I was charged with the special opposition to it. I am opposed to it, but I never heard of the bill until it was read here the other day. So I am not in a position of leading any organized, concerted opposition to it in any way. I am speaking solely for myself. The fact that I did not propose to speak on it did not indicate what anyone else might wish to do.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from California?

Mr. BACON. I do.

Mr. FLINT. I did not intend to convey the idea that I thought the Senator from Georgia was making any special point against the bill or leading any opposition. The motion having been made by him to strike out sections 5 and 6 and having discussed the bill day before yesterday, I happened to have some conversation with him, and I asked him if he desired to debate the bill further. He told me that he did not, and I simply made that statement to the Senate.

Mr. BACON. I wish simply to relieve myself from what might have been concluded by others by the Senator making the statement that I was specially charged, or that I was representing anybody else, in the matter of my opposition to this bill.

Mr. President, I think that the reasons for the opposition to section 5, of which the Senator from North Dakota makes inquiry, are best explained by reading the section. It seems to me the mere reading of it shows the objectionable features and that those objectionable features would naturally suggest themselves to anyone upon the reading. As I said a moment ago, I knew there was some such bill pending, but I never saw it and never heard its provisions until the bill was read here on Wednesday.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from California?

Mr. BACON. I do, with pleasure.

Mr. FLINT. I am somewhat surprised to hear the statement of the Senator from Georgia that he never heard of this bill before.

Mr. BACON. I corrected that; I modified it.

Mr. FLINT. I mean until within a few days.

Mr. BACON. No; I modified that. I said I knew there was some such bill, but that I had never heard its specific provisions and never had seen the bill until Wednesday. I did know that the late Senator from South Carolina, Mr. Latimer, was advocating a bill of this kind and that there was a bill upon the general subject of the reclamation of overflowed land, but what its provisions were I did not know; I had never sought to be informed.

Mr. FLINT. What I referred to was a letter from the Senator to the governor of Georgia in receiving a report from the representative of the State of Georgia appointed by the governor of that State to the drainage congress in Baltimore, in which I understood the Senator from Georgia had said he had read that report and it was a matter which had his careful consideration.

Mr. BACON. A letter from me?

Mr. FLINT. This very bill or a like bill was one of the things discussed in that report.

Mr. BACON. A letter from me?

Mr. FLINT. It was so reported in a Georgia paper that was sent to me some months ago.

Mr. BACON. Mr. President, that may be so. If it is so, I can only account for it in this way, that I, as all other Senators, frequently have inquiries about pending legislation; and I simply write back, stating that I will give it proper consideration when it comes up. It may be that there was a letter prepared which I signed which committed me to the fact of knowledge of the bill, which is not the fact. We all know how letters are prepared by our clerical force on routine matters, and however inadvertently I may have signed such a letter—I do not dispute that—I have no recollection of it whatever. But if I did sign it, it was just in some such way as I have indicated. I certainly have had no familiarity with the measures which were proposed to be incorporated in the bill. I did know the fact in a general way that there was a proposition for some legislation looking to the reclamation of overflowed lands.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from California?

Mr. BACON. With pleasure.

Mr. FLINT. The reason I mentioned that fact was that when this bill was prepared and drafted, it was after a consultation, as I understand, with Members from all the States in which there were swamp and overflowed lands, after there had been two congresses held, known as "drainage congresses," where this subject was under discussion. The bill that was drafted and introduced by me, and other bills which were introduced by other Senators last session, were there given consideration. I reached the conclusion that there was some doubt as to the constitutionality of the bill. We then had a conference in the office of the Secretary of the Interior. It is my understanding that all the Southern States which had swamp and overflowed lands were represented at that conference, and that invitations had been sent to the Senators and Members of the House from those States, and that this bill was the result of that conference. As I understood from the communications I had received, this bill met with the approval of practically all the Senators on that side of the Chamber; and I am somewhat surprised now to find a strong opposition to sections 5 and 6 in this bill, which were inserted after the conference to which I have referred and at the request of representatives from that side of the Chamber.

Mr. BACON. Mr. President, I have no doubt all that the Senator from California [Mr. FLINT] says is true. I simply qualify it to the extent that I myself never participated in such a conference, and I myself have never given, knowingly at least, my consent to the provisions of this bill. I repeat that, so far as the detailed provisions of it are concerned, I never heard of them and never knew of them until the bill was read here two days ago.

Now, Mr. President, replying to the question of the Senator from North Dakota [Mr. McCUMBER], I will read section 5, and I trust Senators will listen to it in order that they may appreciate the magnitude of the proposition and may also appreciate the reasons why some of us are not prepared to put the burden upon the Government to undertake the risk which this section

necessarily will put upon and entail upon the Government if the bill becomes a law. Section 5 is in these words:

SEC. 5. That where there are lands in any State not owned or held by the United States which are swamp or overflowed lands, and it shall be made to appear to the Secretary of the Interior that reclamation works by drainage can be advantageously constructed and maintained by local authority under the laws of such State, and that the drainage of such lands is feasible and conducive to public health and the general welfare, the Secretary of the Interior, in his discretion, is hereby authorized, under such rules and regulations as he may prescribe, to loan out of the drainage fund to such State or to any municipality of such State, corporation, or drainage district—

"Corporation"—private corporation. Those are the words.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from California?

Mr. BACON. I do.

Mr. FLINT. The Senator from Georgia dwells on and reads with emphasis the word "corporation." I want to state to him that the word "corporation" was added to the bill. I myself thought it was questionable whether the word "corporation" should be used or permitted. The Senator from Alabama [Mr. JOHNSTON], who was present at that conference, requested that that word should be put into the bill for the reason that, under the constitution of his State, they can not form drainage districts, and they would have to have in the bill the word "corporation" or amend the State constitution, which they did not want to do.

Mr. BACON. That may be a good reason for it, but while that might be a good reason, it is the use of a word which would not be limited in its practical operation to the particular conditions in Alabama, but would include every corporation in the United States which might have an interest in overflowed lands anywhere in the United States—any corporation of any kind, large or small. If that does not open the door wide enough to haul all the money out of the Treasury in a six-horse wagon, I do not know how you could find language that would be better adapted to the purpose.

Mr. McCUMBER. I call the Senator's attention——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from North Dakota?

Mr. BACON. I do, with pleasure.

Mr. McCUMBER. If the Senator will read along further he will see that the security——

Mr. BACON. Yes; I am coming to that.

Mr. McCUMBER. Which the Government has may be nothing more than the bond of the corporation, whatever that may be.

Mr. BACON. Yes.

Mr. McCUMBER. I can see the reason in section 6, because in that section you not only make the contracts with private corporations, but with individuals—with one or more persons. I could see the objection, but my attention had not been called specifically to the word "corporation" in the previous section.

Mr. BACON. Yes. Well, Mr. President, it seems to me that we do not even have to rest our objection on the simple matter of the use of the word "corporation." "Municipality" is a pretty wide word, and means every sort of municipal corporation, of which there are a good many hundred thousand, I suppose, in the United States.

Mr. McCUMBER. I should like to understand, if the Senator will yield to me——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from North Dakota?

Mr. BACON. I do, with pleasure.

Mr. McCUMBER. I should like to understand the reason given by the Senator from California [Mr. FLINT] for the use of this word "corporation." Do I understand that there is no municipal corporation in the State of Alabama that could provide for this drainage—either the State itself or some municipal corporation under the State?

Mr. FLINT. The Senator from Alabama [Mr. JOHNSTON] is now in the Chamber and can answer that for himself.

Mr. McCUMBER. I can not imagine a condition in which the State of Alabama itself could not enter into the arrangement for a loan of funds the same as any other State.

Mr. JOHNSTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Alabama?

Mr. BACON. With pleasure.

Mr. JOHNSTON. Mr. President, I want to say that the conditions in Alabama which required that provision are these: In the lower part of the State is a large quantity of swamp and overflowed lands not owned by the State originally, but ceded to the State by the Government. The purpose is to enable the owners of those lands to form a corporation and come in under the provisions of this bill. I repeat, these are not lands owned by the State or by any municipality, but the purpose is to enable their owners to organize a corporation and bring them in and have this development made, subjecting them to entry as are other lands.

Mr. BACON. Mr. President, I will continue to read, in response to the question propounded to me by the Senator from North Dakota [Mr. MCCUMBER]—

Under such rules and regulations as he may prescribe—

That is, the Secretary of the Interior—

to loan out of the drainage fund—

It is true it is limited to the money which comes in from the proceeds of the sales of the public lands referred to—

to such State or to any municipality of such State, corporation, or drainage district authorized by the laws thereof to construct and maintain such improvements the funds necessary to construct the same, in order that such lands may be drained and reclaimed.

Mr. President, the provision is absolutely without limitation as to what shall be the character of the work; what its cost shall be, and as to who shall be the judge of it. It is true the rules and regulations are to be prescribed by the Secretary of the Interior, but I do not believe in giving to any man, whether he be an official or a private citizen, these wide privileges which relate to the expenditure of the public money.

Talk about extravagance! Mr. President, there is not any possible specific appropriation which can be suggested, or which has been suggested, which begins to reach out as this does in its absolutely limitless proportions for the expenditure of public money.

Mr. CLAPP. Mr. President, will the Senator allow me to interrupt him?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. BACON. Yes.

Mr. CLAPP. I think the authority will necessarily be limited to the fund, which is limited to a certain amount——

Mr. BACON. The drainage fund?

Mr. CLAPP. To money derived from a certain source; so that, while there is some latitude as to where the Secretary of the Interior could put the money, there is a limit to the amount which could be used under the provisions of the bill.

Mr. BACON. Mr. President, I regard the scheme as one wild in the extreme—I think those words are not extravagant—a scheme wild in the extreme. I am simply stating this in answer to the inquiry of the Senator from North Dakota, because I had occupied so much of the time on Wednesday that I did not intend to occupy any further time, but I am responding to the Senator's inquiry.

Mr. HALE. Will the Senator allow me to interrupt him long enough to follow out the suggestion of the Senator from Minnesota [Mr. CLAPP]? He is, as we know, a conservative Senator, a lawyer, who believes in the line of division between the States and the nation. I wish he would tell the Senate, following out his suggestion—and it was a pertinent suggestion—that, however bad the operation of this bill might be, it would be limited by the extent of the fund which could be used in ways to which the Senator from Georgia and others of us are opposed. But in the construction of this bill, in the consultation and consideration of the entire scope and effect of the bill, can the Senator from Minnesota tell us what it was believed would be the extent of the fund which can be used under the provisions of sections 5 and 6? I am asking the question in good faith, because I do not know in the least how much has been left by otherwise profound schemes and plans that have been incorporated into law for the absorption of the proceeds of the sale of public lands. How much do the friends of this scheme believe will be the amount of the fund that could be used in carrying out the provisions of this bill? What was the contemplation of the originators of the plan?

Mr. CLAPP. Will the Senator from Georgia pardon me, as the question of the Senator from Maine calls for a slightly extended interruption?

Mr. BACON. I shall be more than happy if the Senator will proceed. I am on the floor simply in response to the Senator from North Dakota.

Mr. HALE. I think we are all trying to get light on this matter.

Mr. BACON. Yes; and I shall be delighted to have some information along that line.

Mr. CLAPP. On the primary question of the Government taking hold as an instrumentality in the development of this country, of course I would not at this time enter upon a discussion. Some time ago, as Senators will all remember, a proportion of the proceeds from the sale of the public lands was dedicated to the reclamation of arid lands, briefly stated, constituting something in the nature of a revolving fund. The bill provides that the

money received from the sale and disposal of the public lands in the States that are mentioned in the first section since the year 1901—the time at which we began to take the money for the reclamation of arid lands—shall be set aside as a drainage fund. As near as we can ascertain, that sum amounts now to about $5,000,000.

There were three conditions that were to be met. First, where the Government had public land or where the Government was acting as the trustee for ceded Indian reservations. That far the question would be free from very much complication. Under the drainage law the area that can be taken into a drainage district is limited and easily defined, and provision can be made for placing it subordinate to the action of the Federal Government in the administration of the drainage scheme. It would be somewhat difficult for the Federal Government to approach the drainage of lands not owned by the Government in that way.

Many of the States already have laws whereby drainage districts can be created under the State law, the right of eminent domain being exercised, and, under the State law, bonds issued and made a first lien upon all the land embraced in the drainage district.

I may as well say right here that so far as I am personally concerned, looking at this purely from a selfish standpoint, I would have no objection whatever to letting sections 5 and 6 go out of this bill.

Mr. CLAY. Right there, with the Senator's permission, Mr. President——

The PRESIDING OFFICER (Mr. DILLINGHAM in the chair). Does the Senator from Minnesota yield to the Senator from Georgia?

Mr. CLAPP. Yes.

Mr. CLAY. As I understand, there are two schemes in this bill——

Mr. CLAPP. Three.

Mr. CLAY. Yes, three. One is to take the proceeds of the public lands that have been collected since 1901 and convert those proceeds into a drainage fund amounting to $5,800,000.

Mr. CLAPP. Approximately.

Mr. CLAY. Yes; I have the figures; and for that fund to be used in draining swamp lands owned by the Government of the United States, and then to be loaned out to private individuals or corporations in States wishing to drain private lands, not lands belonging to the State or to the Government. In other words, as I understand, the provisions in sections 5 and 6 contemplate that if corporations or drainage companies own swamp lands in the States and the Secretary of the Interior thinks it proper to let those persons or corporations have public funds for the purpose of draining their lands, then the Secretary of the Interior can grant that privilege and take a lien upon the land in the shape of the bonds of the private companies for the purpose of securing the Government. Am I correct in that statement?

Mr. CLAPP. I was trying to explain that.

Mr. CLAY. Just a word right there, with the Senator's permission. When we undertake by taxation to collect money from the entire American people and loan it to private individuals to develop their private enterprises, is it not a very dangerous step?

Is it not true, I will ask, with the Senator's permission, that if you let the drainage companies have public funds to develop their private enterprises, men who may want to develop railroads or factories or any other geat enterprises may say. "Follow the same line, collect money, and loan it to us to develop our enterprises?" Is not it a very dangerous precedent when we undertake to collect funds for any other purpose except to pay the expenses of the Government?

Mr. CLAPP. Mr. President, I share with the Senator in charge of this bill surprise at the attitude of some Senators in regard to this particular section 5. We had a conference, at which several Southern Senators and several Southern Representatives in Congress were present, and we were advised by them that in some of their States neither the State nor the counties could issue bonds. I think the State of Arkansas was mentioned as one of them, although we afterwards learned that drainage districts in that State could issue bonds in order that this money might be used. In those States where, under their constitutions, neither the counties nor the State could issue bonds which the Secretary of the Interior could purchase to aid them by taking their bonds, at the suggestion of some of these gentlemen from States thus situated with reference to their constitutions, those who worked on this measure, after two or three conferences, inserted the word "corporation." As I said before, so far as my State is concerned and so far as I am personally concerned, I have no objections whatever to sections 5 and 6 going out of this bill. They were inserted in order that this money might not be limited in its use to the States in which the money was collected, but that those States which had no public lands, if they could not reach out either as States or by the action of their counties and participate in the benefits of this fund, could, under their statutes, authorize the creation of drainage districts, which had to be called "corporations," and thus obtain their share of the benefits of this bill.

Mr. FOSTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Louisiana?

Mr. CLAPP. In just one moment. I should like to complete this sentence. I can see no great difference in principle between the United States Government depositing money in the banks or using its money to carry on reclamation projects in the form of a revolving fund and the use of this money for this particular purpose. The principle is already established. Now I yield to the Senator from Louisiana.

Mr. FOSTER. Just for information, Mr. President, I should like to ask upon what basis this fund is to be distributed among the different States?

Mr. CLAPP. Mr. President, there could be fixed no definite basis. If there could have been, it would have been to the disadvantage of the States represented by some of the Senators who seem to be in opposition to this bill. For one, representing a State that has contributed a large amount to this Government fund, I should be perfectly satisfied, looking at it purely from a selfish standpoint, to limit this to the States in proportion as it came from the States, but in a spirit of fairness and recognizing the condition——

Mr. CLAY. Mr. President, with the Senator's permission——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Georgia?

Mr. CLAPP. Yes.

Mr. CLAY. The Senator can not think that it would be just and equitable to take the public lands belonging to the Government of the United States located in certain States and sell those lands, take the proceeds, and utilize them for the benefit of the States in which the land is located? The public lands of the United States belong to the American people.

Mr. CLAPP. I do not say that would be fair.

Mr. CLAY. Well, I understood the Senator to say that he would be perfectly willing——

Mr. CLAPP. I said "looking at it from a purely selfish standpoint."

Mr. CLAY. I understand the Senator now. Certainly, that would not be equitable.

Mr. CLAPP. But taking a fair view and a broad view, this fund would be distributed.

Mr. FOSTER. I should like to ask another question.

The VICE-PRESIDENT. Does the Senator from Minnesota yield further to the Senator from Louisiana?

Mr. CLAPP. Certainly.

Mr. FOSTER. What limitation or restriction is placed upon the Secretary of the Interior in the matter of loans to private corporations and individuals?

Mr. CLAPP. There is no limitation, except that the State seeking the benefit of this bill must pass the necessary laws authorizing action to be taken by the State itself if, under its constitution, it can borrow the money, or by the counties, or, if neither the counties nor the State, under the State constitution, can borrow it, then to authorize the creation of corporations for that purpose. If the Secretary of the Interior is satisfied of the legality of those proceedings and the security that is provided for the bond issue, he may use the money for that purpose.

Mr. HALE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Maine?

Mr. CLAPP. Yes.

Mr. HALE. I am in search of information, and I have not the familiarity with the operation of the land laws, for instance, that Western Senators have. I am going to make an inquiry which may only demonstrate my lack of information on this subject. The Senator refers to the use of this fund as though it were a special and existing fund by itself. It is made up of the proceeds from the sale of public lands that have come into the Treasury since the year 1901. Am I correct in that?

Mr. CLAPP. Yes, sir.

Mr. HALE. Now, as I have said, it may disclose my entire lack of information, but what has become of the funds that have been realized from the sale of public lands since 1901, unless they have gone into the Treasury? And if those funds

have gone into the Treasury like any other funds received by the Government, wherein does this bill differ from in terms appropriating so much money out of the Treasury in order to create this reserve from which these appropriations and expenditures shall be made?

As I say, I am not familiar enough to know. When the Government collects duties they go into the Treasury. The money comes from a specific source. But it is a part of the revenue and becomes a part of the Treasury fund. Is there any law by which funds derivable by the Government from the sales of public lands differ from any other assets of the Treasury? And if not, why refer to this as a special fund which has been received by the Government since 1901? Why not make an outright appropriation? I wish the Senator would tell the Senate. It may be that everybody else knows why this is so. I do not.

Mr. CLAPP. I will say to the Senator from Maine——

Mr. FOSTER. If the Senator from Maine——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Louisiana?

Mr. CLAPP. With pleasure.

Mr. FOSTER. If the Senator from Maine will read the first section of the bill, I think he will find that this is an appropriation equal to the amount of the money received from the sales of public lands since 1901.

Mr. HALE. I had so supposed.

Mr. FOSTER. Yes.

Mr. HALE. Why not put it in terms as an appropriation?

Mr. CLAPP. I will explain why. Of course in effect it is an appropriation of this money, and there is no disguising of that fact in the bill. But when we started the Reclamation Service there was possibly some sort of sentiment that while this money was in the Treasury of the United States, yet, having come from some particular source, it was proper to use it for the purpose of reclaiming the arid lands; and it was simply to put it on all fours with that, to give it the same claim to the consideration of the Senate, to place it upon a parallel with the general scheme of the reclamation of arid lands, that it was limited to a sum equal to the money received from the sale of public lands in the States named.

Mr. HALE. Then the Senator recognizes the fact that it is an appropriation from the Treasury, only limited in amount by what the avails of this fund have been for the last seven years?

Mr. CLAPP. Certainly.

Mr. HALE. It is an outright appropriation from the Treasury.

Mr. CLAPP. That is the reason why these States were referred to. We felt, as I have already said, that it would place this plan on all fours with the plan to appropriate this sum in that way. I think that is all I care to say, unless some other Senator cares to ask questions.

Mr. McCUMBER. Mr. President, some years ago the Government entered upon this great step of making homes for the American people. It started out with the arid lands of the West. The same economic spirit which actuated the Senate in voting for the reclamation of arid lands logically would lead the Senate to vote for the reclamation of swamp lands. The reasons are the same, and the conditions are practically the same. So I find myself heartily in favor of the Government assisting in that great project, which may be said to be too great for the States to handle alone. It is proper to drain these swamp lands where we can do so.

But I can not say that I am in exact harmony with the provisions of this bill and the methods by which it seeks to accomplish that particular purpose. The public lands in any State are to a certain extent assets of that State. They belong to the State. They become part of the property of the State. As the lands in one portion of a State, being very rich, might be taxed in order to open up and develop other lands that were less valuable, so it might be proper that the proceeds of the sale of lands in some portions of the United States might well be utilized in the development of other sections of the country. So we have made no objection to that proposition.

We will suppose now that there are in Florida a few hundred thousand acres of swamp lands, or there may be a million acres of swamp lands, that can properly be drained. The State does not want to take hold of the proposition. The Government itself is able to take hold of it. But I can not imagine why we can not reach this by a simple proposition and by a contract with the State in every instance. There is not a State in the Union which, by reason of its sovereignty, can not make any provision it sees fit for the taxation of lands in any district or in any portion of the State for the purpose of its internal development; and if it can make such a law affecting the lands within the State, it can also pass a law which would be in harmony with the spirit of this bill for the utilization of a portion of the funds raised under it to be used in the State and to be secured in such way as the laws of the State may designate.

So there seems to me to be the first objection that can be logically made against this bill. It seeks to deal with the municipality. It seeks to deal separately with the county. It seeks to deal with the drainage district, and finally it goes further and deals with a corporation, and ends up by making a special contract with any individual who wishes to have his farm drained, and the nation itself is placed in a position where it must enter into a contract with that individual if he has 1 or 10,000 acres to be drained.

I do not believe that the Government itself, if it is going to enter on this project, should deal with anyone but the State, and Congress should pass a law framed in such a way that the State itself can take advantage of it and pass such laws as it sees fit in order to secure the repayment of the fund that may be provided for this purpose.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from California?

Mr. McCUMBER. Certainly.

Mr. FLINT. The purpose of this bill is just as outlined in the statement of the Senator from North Dakota, and the language which he refers to, "individuals or corporations," was inserted to cover a certain condition that exists in certain States. In my opinion, those two words should be stricken from the bill, and it should be left so that the transaction would be entirely with the State or with a drainage district or a municipality.

Mr. McCUMBER. I would go further than that and eliminate the municipality and the drainage district, and let the State provide by its own laws what portion of the State it desires to have drained, and then make provision to act in harmony with the General Government in seeking to reclaim that particular district.

But here is another objection that I have outside of that, and that is to the use in one State of funds realized in another State. I can see how it would operate, more particularly in my own State. Out of the twenty-five or thirty million dollars that has been raised for the reclamation fund my own State has contributed eight or ten million dollars. Of the eight or ten million dollars already contributed there has been used within the State only about a half a million dollars. Most of it has gone to Colorado and Arizona, where it was thought they needed it in those great projects. We are not seriously objecting to the fact that they take the money received from the sales of land in our State to develop these other States, but along the eastern line of that State and the western line of the State of Minnesota there is a vast tract of country—the valley of the Red River of the North, about 40 miles at the south end, gradually growing wider, until it is nearly 600 or 800 miles wide at the north end of the valley. It is alluvial land. It is subject to overflow during many years by the rise of the Red River, and much damage has been done. On the west side to some extent, on the eastern side to a great extent, they have suffered by reason of the inability to drain the country.

A great system must be inaugurated, a system that will take in a section of country as large as several of the Eastern States. Now, that can only be dealt with by the Government itself. The State of Minnesota has appropriated millions of dollars for drainage on the eastern side, and yet they have only begun that great project. If we are to deal with the Government, we prefer that the money realized in our State, or at least a goodly portion of it, may be used for that purpose, and not go off wholly to another State. I wish to make the provisions of this bill so broad and so certain that if the two great States of Minnesota and North Dakota desire to enter into a contract whereby eight or ten million dollars from those States are to be used for this purpose they shall have the power to do so, and they shall have a preference right before the balance of the fund is taken to develop some other sections of the country.

Under the present condition the money will all, perhaps, be used in the development of the country in the southern section. But we can not have one law for one State and another law for another, and so I think we should modify this bill so that the contract shall be made at all times between the State and the General Government, and the contract shall be such as shall be satisfactory to the Secretary of the Interior, and as will insure the repayment of the sum loaned for that purpose.

Mr. TELLER. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Colorado?

Mr. McCUMBER. I yield.

Mr. TELLER. I wish to ask the Senator from North Dakota whether the land to which he refers has passed into private ownership or whether it belongs to the State under the act of 1850 granting to the States the swamp lands within their boundaries?

Mr. McCUMBER. Nearly all of the public land in that section of the country has been taken up. On the west side through our State there is, perhaps, not an acre that is not now in private ownership. But the Senator must remember that in this reclamation project we must take in private with public lands. The land for the most part has entered into private ownership, and it makes no difference to the Government whether the land is to-day in public ownership and to-morrow will go into private ownership or whether it is in private ownership to-day and will remain so to-morrow. The object is to make a certain portion of the country productive, so that it may support the vastly increasing population of the United States.

Mr. TELLER. I think the Senator is somewhat mistaken. I think the Reclamation Service deals only with public lands. I know it is said that the Government has been going beyond that, but I think the act itself did not contemplate anything but the management of public lands.

Mr. McCUMBER. I think the Senator is mistaken, because I think he will find provisions in the act as to land in private ownership. We have a project to-day in our own State, although it is only a small system of a few thousand acres, and yet, perhaps, three-fourths of that is in private ownership. So whatever our system may be in the future, we shall have to consider it as applying to private lands, and as it applies to lands in private ownership we will have to deal with the State, which has jurisdiction over the land, in order to get the proper authority for condemnation proceedings and otherwise.

Mr. TELLER. I should like to ask the Senator from North Dakota if he has given any attention to the decisions of the Supreme Court in two or three cases, where they have declared that the Reclamation Service could only be sustained on the theory that the Government was improving its own land? The court was very emphatic in the case of Kansas *v.* Colorado, which can be found in 206 United States——

Mr. CLAY. Page 80.

Mr. McCUMBER. I remember very well that case.

Mr. TELLER. The question came before the court——

Mr. McCUMBER. I understand the theory of the court.

Mr. TELLER. The question came before the court whether it could sustain the constitutionality of that act, and it put it, I understand, rather reluctantly and rather feebly, on the ground that it was Government land and the Government was improving its own land.

Mr. McCUMBER. I have no doubt whatever of the constitutionality of a law which should declare that the proceeds of the sales of public lands in any given area may be used for the development of certain sections of the United States, with the consent of the State in which the land is situated and upon a law passed by that State.

This is all I desire to say in reference to the matter. It does seem to me that we ought to modify the bill so as to get rid of municipalities, private corporations, and individuals and deal only with the great States.

Mr. CLARKE of Arkansas. Mr. President, the bill contains a provision which is so manifestly unjust that it devolves upon those who have charge of the measure to explain, as I do not think they can justify on any principle of justice familiar to me. The fund is raised by the sale of land in thirteen enumerated States, and under section 5 the money may be loaned out to any drainage project in any of the forty-six States of the Union. The so-called "arid and semiarid States" have had all of the public lands within their borders donated to them for the purpose of reclaiming lands of that character by irrigation. Quite a considerable fund has been created from sales of these lands. The State of Texas reserved all of the public lands in that republic at the time it was made a part of the Union. Yet all these States have a right to participate in the distribution under this bill, notwithstanding the fact they have contributed nothing to the fund. The thirteen States, the sale of whose land has produced the fund, have absolutely no preference.

It is perfectly obvious that it is left entirely to the discretion of the Secretary of the Interior to select the particular drainage scheme to which he will devote the fund. It rests in his discretion absolutely, without control or supervision. It is a power solely vested in him. He may conclude that some New England enterprise first requires to be developed, rather than some one located in some one of the thirteen States, the proceeds of the sale of the land within whose borders constitute the fund. It widens that bureaucratic idea of discretion which ought not to be further enlarged. The determination of a matter of this magnitude should not, in justice to all sections and interests concerned, be submitted to the uncontrolled discretion of any one man, no matter how eminent he may be. So far as I am concerned, I am not willing to so submit it on behalf of the State of Arkansas.

The Senator from North Dakota [Mr. McCUMBER] has just said, with much force, that there is a certain relation between the public land in a State and the State itself; and the policy of the Government has been to regard the money derived from this source as a fund legitimately to be devoted to the development and improvement of the locality in which it is raised. That policy was adopted and carried out in the early history of the Government, when the swamp and overflowed lands act of September, 1850, was passed. It is further shown in the act providing for the reclamation system under which many irrigation projects are being carried forward. There is no reason why that traditional policy should be departed from now, unless the explanation is to be found in the fact that it has become necessary to get more Congressional votes in its support than could be marshaled if the bill were limited to a recognition of that first and salutary practice. It is recognized as among the permissible tactics of legislation that sometimes bills must contain provisions more comprehensive than their actual merit in order to enlist enough votes to make them laws. That seems to me to be the only excuse why it should in this instance be provided that a fund raised by the sale of public lands in thirteen particular States shall be available for distribution throughout the entire Union.

The New England States have no public lands, and never had any in the sense we now understand the term. The supposition is that these States have from time to time received an equivalent in the way of Government favors which will more than equalize in the general accounting the absence of a body of public lands.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from New Hampshire?

Mr. CLARKE of Arkansas. Certainly.

Mr. GALLINGER. I am not familiar with this subject, my attention not having been called to the bill until to-day. I wish to ask the Senator from Arkansas, who is familiar with it, whether if these public lands belonging to the Government were sold the money would not go into the Treasury of the United States.

Mr. CLARKE of Arkansas. Unquestionably.

Mr. GALLINGER. And the New England States would naturally derive some benefit from that fund.

Mr. CLARKE of Arkansas. Yes.

Mr. GALLINGER. If these lands are to be disposed of as provided for in this bill, is there any injustice in providing that the States which do not have public lands within their borders shall derive some benefit from the measure itself? Is there any injustice in it?

Mr. CLARKE of Arkansas. I would hardly characterize it so strongly as "injustice," but I should say it was not consistent with the policy of the Government, which, from the beginning, has been to treat the proceeds arising from the sale of these lands, not as part of the revenue of the Government, but as a means of developing the vicinity in which the lands are situated. Under the settled policy of the Government these lands and the proceeds of the sale thereof are deemed parts of the public revenue in a limited and special way only. The whole course has been to devote them and their proceeds to the development of the locality in which they are situated. A primary dedication was laid upon them for that purpose. After sale for cash, and the proceeds have become in fact a part of the general revenues of the Government, the State's share therein has been fixed at 5 per cent. The States are allowed to appropriate, under existing law, to their own use 5 per cent of the proceeds of the sale of public lands within their borders. This is the State's entire interest after the public lands have become by cash sale a part of the public revenues.

Mr. President, the objection I have to the bill in its present form is fundamental. After the Government has pursued so long and so uniformly this policy of using the public lands in a locality for the improvement of that particular locality, it ought not to be departed from now. The proceeds of the sale of the lands in these thirteen States should be used to create a drainage fund, and there should be devised some fair and just system of distribution among the States whose lands contributed to the raising of the fund, and it should not be left entirely to the discretion of any officer, no matter if he is a mem-

ber of the Cabinet, to say that a single drainage scheme in some State remote from those contributing to the fund shall absorb it all, to the exclusion of the contributors. Even if there should be a basis of distribution adopted that would distribute to the noncontributing States only part of the fund, still that would only qualify the injustice.

As the Senator from North Dakota [Mr. MCCUMBER] has stated, his State contributed $10,000,000 to the irrigation fund, and although that Service has been in operation for some ten years less than half a million have been expended in his State. It may be that the area of the States with which North Dakota is grouped is so small and the fund is so large that ultimately they will get around to North Dakota in the distribution and do justice to that Commonwealth. But that never can happen in this case, for the reason that North Dakota and every other State in the Union, many of which have been liberally and amply provided for in other ways, will be entitled to participate in the benefits of the act to the same extent—possibly to the exclusion—as the thirteen States, the sale of whose lands has brought into existence the fund. I protest against it. I can see no reason founded in justice and a due recognition of the equities that have grown out of a fixed and generally observed policy why it should be so.

Mr. CLAPP. Mr. President, I can hardly agree with the Senator from Arkansas [Mr. CLARKE] in his position. While it is true that the amount appropriated by this bill is based upon the amount that has been received in the past from the sale of public lands in the States named, and that there is also appropriated the money which is to be received from those States, still the fact remains that the money which is in the Treasury of the United States belongs to the people of the United States, and it should be placed where, all things considered, the demands of the situation and everything else, it ought to go. If there were some particular place that required relief to-day we would appropriate money for that purpose, even though that locality might not have contributed a dollar thereto.

Mr. CLARKE of Arkansas. Why, then, do you refer to the money derived from the sale of public lands since 1901? Why do you not say that "$5,000,000 be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated?"

Mr. CLAPP. Because it would have taken more language and would have been no clearer.

Mr. CLARKE of Arkansas. It is a question of language? I thought it was a question of money.

Mr. CLAPP. If the Senator will pardon me for a moment, there are two provisions of this appropriation. First, we appropriate an amount of money equal to that which they have paid and then we appropriate the money hereafter received from the sale of land in these States.

There is nothing obscure about it in that respect. No one who reads the bill can fail to see that in one instance it is in effect taking money which is to-day in the Treasury of the United States, and, while so far as some of our States are concerned it would be to their benefit, perhaps, to limit it as suggested by the Senator from Arkansas, this is a measure that can only be justified upon the ground that it is for the general good of the people of the United States.

Mr. BACON. I should like to ask the Senator a question, with his permission.

Mr. CLAPP. Certainly.

Mr. BACON. The Senator might say that with reference to the reclamation of public lands, because when reclaimed they would be enhanced in value, and the benefit of that enhancement would enure to all. Could the Senator say that to lend money to corporations or municipalities or other owners of particular overflowed lands is a matter for the general good; something that will enure to the benefit of all people?

Mr. CLAPP. If it is not, it can not be justified.

Mr. BACON. I think the Senator is right in that respect.

Mr. CLAPP. We will take a community in some frontier State of this Union. There is not a citizen of the United States who to some degree—it might be difficult to determine to what degree—is not interested in the prosperity, the welfare, and the happiness of that community. Upon what other theory can you take money which is paid into the Treasury of the United States and expend it to deepen a river in Oregon or in Louisiana? It is on the principle that it is for the benefit of the entire people of the United States.

Mr. BACON. The river is open to the commerce of the United States.

Mr. CLAPP. The land, perhaps, in Missouri that is reclaimed under this bill is open to the homeseeker from some great city of the East.

Mr. BACON. I am not speaking of public lands.

Mr. CLAPP. I am speaking of private lands—lands that to-day could not be made a home by the individual. A thousand people from New York City seeking homes would not have the means to take a tract of land and convert it into cultivable land so that they could make a living off of it.

Mr. BACON. I will ask the Senator this question: Would not the same reason justify the Government in lending a farmer money with which to buy fertilizer for his land on the ground that it would produce more crops and thus be a benefit to all the people of the United States?

Mr. CLAPP. No; because, as a rule, the farmer, no matter how small his farm, is able to cultivate his farm; but when you find a large area overflowed, the poor settler is not able to drain that land.

Mr. BACON. I do not wish by my inquiry to be possibly misunderstood by some unreasoning person as saying that I would favor loaning money to the farmer for that purpose. I simply endeavored to show the untenableness of the argument of the Senator from Minnesota by that illustration. I think that one would be equally as proper a subject of consideration by the Government as the other.

Mr. CLAPP. I think there is a vast difference between an individual who in some way can cultivate his little farm and people trying to recover swamp and overflowed land that can only be done either by a large amount of capital or by the combined credit which rests upon the value of the lands when they are reclaimed.

But, as I said before, that is a phase of the bill I do not care particularly for. It seemed to me when I drew the bill, and it seems to me to-day, that it is a very proper measure.

In regard to the relation of the State to the bill, this was done because those who drew the bill and worked the bill out were advised that certain States under their constitutions could not carry this work forward, and the only thing which they could do would be to pass a law, just as I understand was done in Arkansas, to authorize a drainage district to incur indebtedness and issue bonds.

So far as one interested in the bill, I am perfectly willing to concede the position of the Senator from North Dakota, if it is fair in view of the constitutional limitations which rest, I understand, upon some of the States. There was nothing secret about these conferences. We tried to get all who were interested in drainage from the North and the South and the West. The South was particularly interested, and it was represented at the conferences. We tried to draw a bill which would be fair to all those who might be interested in the outcome.

Mr. CLAY. Will the Senator allow me to ask him a question?

Mr. CLAPP. Certainly.

Mr. CLAY. Does not the bill go very much further than the bill we passed for reclaiming arid lands? If I remember correctly the substance of the bill we passed reclaiming arid lands, we simply dealt with the lands belonging to the Government and such adjoining lands belonging to private individuals as might be necessary to accomplish the scheme proposed.

Mr. CLAPP. Yes, sir.

Mr. CLAY. In other words, it provided that where the Government owned lands in Wyoming and the other States referred to, the funds arising from the proceeds of the public lands in those States should be utilized to reclaim them, and the Government was authorized to condemn such other lands as the Government found necessary to carry out the scheme.

The reclamation act, as I understand it, did not contemplate that the Government funds should be utilized for the purpose of loaning money to private individuals to develop and reclaim their lands. This bill not only deals with swamp lands for the purpose of reclaiming them, but it also authorizes States, municipalities, and corporations owning these private lands to borrow money from the Government to reclaim them. It strikes me that this scheme goes much further than the scheme we adopted for reclaiming arid lands.

Mr. CLAPP. If the Senator will pardon me, I tried to make that plain in the previous statement this afternoon. The area that can be brought into an irrigation plan or scheme, as we use that term here in this debate, is easily defined. While I am not as familiar with irrigation matters as I am, perhaps, with this question, I understand that under the irrigation plan the owner of private land has to subordinate his land to the irrigation scheme, and he has to make a certain agreement. From the difficulty of embracing within a fixed limit by Government administration the land contained in the drainage area, instead of trying to provide that the owners should first subject

their land to Government control and then receive them back again after the advances by the Government had been made for the drainage, as is substantially the rule in reclamation, in order that the condition might be more easily met, we provided here that the State should pass the necessary law creating drainage districts and authorize the issuance of bonds upon the drainage district; and instead of temporarily holding the title of the land until reimbursed from the sale, the Government would hold the bonds issued upon that drainage district.

That is a question purely of policy for the Senate to determine. I do not think that those of us who perhaps might be said to have this matter more immediately in hand care particularly what disposition the Senate makes of section 5 and section 6.

Mr. CULLOM obtained the floor.

Mr. BACON. Will the Senator pardon me just a minute in order that we may have this matter in shape?

Mr. CULLOM. I yield to the Senator from Georgia for a moment.

Mr. BACON. I ask the Senator from California if there is not a misprint in the bill? I understand that there is a large amount of public land in California; yet in the enumeration of States I do not find the name "California." Will the Senator tell me whether I am correct in that?

Mr. FLINT. Yes.

Mr. BACON. It is a misprint?

Mr. FLINT. No; it is not a misprint. The proceeds of the sale of lands in the State of California are covered into the reclamation fund. Now, the Senator from Georgia and a number of Senators on the other side of the Chamber——

Mr. BACON. Oh, well——

Mr. FLINT. I want to emphasize it.

Mr. BACON. The Senator need not speak about this side of the Chamber. It is not a party matter.

Mr. FLINT. I want to say that——

Mr. BACON. Oh, no.

Mr. FLINT. Either we have been mistaken in what we have done or we did not understand what those on that side of the Chamber desired. The bill originally was drawn by me providing that the money should be disbursed in the States from which the money was received, but the Senators from South Carolina with other Senators insisted that it should be changed for the reason, they said, that "we can not contribute to this fund, and at the same time we have swamp lands that we think should be drained." Owing to that condition, in the last drainage congress they insisted on an amendment to the bill as set forth in the present measure.

Mr. BACON. What does the Senator say about the Senator from Maine? The Senator insists on speaking about Senators on this side of the Chamber.

Mr. FLINT. Because Senators on that side of the Chamber were those who insisted on the change.

Mr. CLAY. What Senator?

Mr. FLINT. I refer particularly to the late Senator Latimer in the drainage congress. The original bill provided that the money should be expended in the States from which the money was received.

Mr. CLAY. The honorable Senator from South Carolina represented himself.

Mr. FLINT. Not only that, but the entire drainage congress adopted his views and declined to approve of the measure.

Mr. CLAY. Mr. President——

The VICE-PRESIDENT. Does the Senator from California yield to the Senator from Georgia.

Mr. FLINT. When I have finished. He declined to permit an approval of the amendment, and in conference, for the purpose of obtaining the passage of a measure, it was amended so as to provide that the money should be expended generally in all the States from which it was derived.

Mr. CULLOM. Mr. President——

Mr. CLAY. One moment. The Senator speaks of Senators on this side of the Chamber. I did not know that party politics had anything to do with the bill. I was criticising the bill, judging it as I read it, on its merits. Surely the Senator from California does not think that a drainage congress could get together and discuss a measure of this kind and find Senators on this side of the Chamber or on the other side either——

Mr. FLINT. I am not attempting to have it bind the Senate in any way. I am simply giving the Senator the reason why those who in conference drafted the bill decided to change it from having the work carried out in the States in which the money was received rather than throughout the entire country.

Mr. CLAY. I will say to the Senator, with his permission, that I do not believe the Government of the United States ought to collect money by taxation and loan it to individuals or anybody else for the purpose of carrying on their business. I believe that we ought to confine taxation to the amount of money necessary to pay the legitimate expenses of the Government, and not use it for any other purpose.

Mr. CULLOM. Mr. President——

The VICE-PRESIDENT. Does the Senator from California yield to the Senator from Illinois?

Mr. CULLOM. I was recognized some time ago for another purpose than the discussion of the pending bill. It is evident that the bill can not be passed to-day, and it is very important that we should have a brief executive session.

Mr. TELLER. Will the Senator from Illinois yield to me for a moment?

Mr. CULLOM. Certainly.

Mr. TELLER. I do not want to detain the Senate now, but I wish to reply to some things that have been said about the Reclamation Service and to set the matter right if I can. When the bill comes up on another day I will be prepared to speak on it.

EXECUTIVE SESSION.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After eighteen minutes spent in executive session the doors were reopened, and (at 3 o'clock and 43 minutes p. m.) the Senate adjourned until to-morrow, Saturday, April 18, 1908, at 12 o'clock meridian.

## NOMINATIONS.

*Executive nominations received by the Senate April 17, 1908.*

CIRCUIT JUDGE.

A. N. Kepoikai, of Hawaii, to be judge of the circuit court of the second circuit of the Territory of Hawaii. A reappointment, his term expiring April 18, 1908.

PROMOTIONS IN THE NAVY.

Midshipman Douglas L. Howard to be an ensign in the Navy from the 13th day of February, 1908, to fill a vacancy existing in that grade on that date.

P. A. Surg. Ralph W. Plummer to be a surgeon in the Navy from the 23d day of February, 1908, vice Surg. Victor C. B. Means, retired.

APPOINTMENTS IN THE NAVY.

The following-named citizens to be assistant surgeons in the Navy from the 11th day of April, 1908, to fill vacancies existing in that grade on that date:

George C. Rhoades, a citizen of West Virginia;
Sankey Bacon, a citizen of Nebraska;
Frank P. W. Hough, a citizen of Virginia; and
Joseph A. Biello, a citizen of Pennsylvania.

PROMOTIONS IN THE ARMY.

*Medical Department.*

Capt. Thomas S. Bratton, assistant surgeon, to be surgeon, with the rank of major, from April 15, 1908, vice Flagg, resigned.

*Cavalry Arm.*

Lieut. Col. George A. Dodd, Fourth Cavalry, to be colonel from April 14, 1908, vice Kerr, Twelfth Cavalry, appointed brigadier-general.

Maj. John Pitcher, Second Cavalry, to be lieutenant-colonel from April 14, 1908, vice Dodd, Fourth Cavalry, promoted.

Capt. Stephen L. H. Slocum, First Cavalry, to be major from April 14, 1908, vice Pitcher, Second Cavalry, promoted.

First Lieut. John W. Moore, Second Cavalry, to be captain from April 14, 1908, vice Slocum, First Cavalry, promoted.

POSTMASTERS.

COLORADO.

George C. Bruce to be postmaster at Fort Lupton, Weld County, Colo., in place of Sidney C. Smith, resigned.

FLORIDA.

William L. Keefer to be postmaster at Fort Pierce, St. Lucie County, Fla., in place of Peter P. Cobb, resigned.

GEORGIA.

Samuel B. Robinson to be postmaster at Sandersville, Washington County, Ga., in place of Cicero F. Harrison. Incumbent's commission expired November 24, 1907.

Robert L. Williams to be postmaster at Griffin, Spalding County, Ga., in place of Robert L. Williams. Incumbent's commission expired February 19, 1907.

ILLINOIS.

Charles A. Brown to be postmaster at Toluca, Marshall County, Ill., in place of James P. Mathis. Incumbent's commission expired March 31, 1908.

Frank E. Davis to be postmaster at Arlington Heights, Cook County, Ill., in place of Frank E. Davis. Incumbent's commission expired April 12, 1908.

John Grierson to be postmaster at Morrison, Whiteside County, Ill., in place of John Grierson. Incumbent's commission expires April 21, 1908.

Harry Whitver to be postmaster at Walnut, Bureau County, Ill., in place of Harry Whitver. Incumbent's commission expires April 27, 1908.

INDIANA.

Charles T. Benton to be postmaster at Brownstown, Jackson County, Ind., in place of Hamlin Smith. Incumbent's commission expires April 21, 1908.

John W. Call to be postmaster at Gary, Lake County, Ind. Office became Presidential April 1, 1908. Postmaster removed.

Harry H. Crooke to be postmaster at Odon, Daviess County, Ind., in place of George D. Abraham. Incumbent's commission expires April 27, 1908.

Francis H. Manring to be postmaster at Greentown, Howard County, Ind., in place of Charles E. Disbro. Incumbent's commission expired January 25, 1908.

Will K. Penrod to be postmaster at Loogootee, Martin County, Ind., in place of Henry Wood. Incumbent's commission expires April 27, 1908.

William A. Phillips to be postmaster at Atlanta, Hamilton County, Ind., in place of Austin B. Cochran, resigned.

IOWA.

William A. Grummon to be postmaster at Rockwell, Cerro Gordo County, Iowa, in place of William A. Grummon. Incumbent's commission expired March 7, 1908.

KANSAS.

Charles Hodgson to be postmaster at Mulvane, Sumner County, Kans. Office became Presidential April 1, 1907.

George W. Hook to be postmaster at Sabetha, Nemaha County, Kans., in place of George W. Hook. Incumbent's commission expires April 27, 1908.

M. M. Michael to be postmaster at Burrton, Harvey County, Kans., in place of Joseph S. Stone. Incumbent's commission expired December 17, 1907.

MASSACHUSETTS.

William H. Pierce to be postmaster at Winchendon, Worcester County, Mass., in place of William H. Pierce. Incumbent's commission expires April 19, 1908.

MICHIGAN.

Albert J. Capen to be postmaster at Fennville, Allegan County, Mich., in place of Albert J. Capen. Incumbent's commission expired December 10, 1906.

Edmund O. Dewey to be postmaster at Owosso, Shiawassee County, Mich., in place of Edmund O. Dewey. Incumbent's commission expired April 5, 1908.

William J. Ingersoll to be postmaster at Mayville, Tuscola County, Mich., in place of William J. Ingersoll. Incumbent's commission expired April 5, 1908.

Montague W. Ripley to be postmaster at Montague, Muskegon County, Mich., in place of Montague W. Ripley. Incumbent's commission expired March 30, 1908.

MINNESOTA.

John Atz to be postmaster at Hancock, Stevens County, Minn., in place of John Atz. Incumbent's commission expired February 23, 1908.

Francis M. Shook to be postmaster at Aitkin, Aitkin County, Minn., in place of Francis M. Shook. Incumbent's commission expires April 27, 1908.

MISSOURI.

Charles L. Farrar to be postmaster at Macon, Macon County, Mo., in place of Samuel J. Wilson. Incumbent's commission expired March 13, 1907.

Louis Haeffner to be postmaster at Valley Park, St. Louis County, Mo. Office became Presidential January 1, 1908.

Thomas R. Tolleson to be postmaster at Leadwood, St. Francois County, Mo. Office became Presidential April 1, 1908.

MONTANA.

Lottie M. Conyngham to be postmaster at Kendall, Fergus County, Mont., in place of John Jackson, jr., resigned.

NEBRASKA.

James H. Overman to be postmaster at Stella, Richardson County, Nebr., in place of James H. Overman. Incumbent's commission expires April 27, 1908.

William Royer to be postmaster at Seward, Seward County, Nebr., in place of William Royer. Incumbent's commission expired March 12, 1908.

NEW YORK.

Francis C. Allen to be postmaster at Ovid, Seneca County, N. Y., in place of Lewis B. Jewell, removed.

David Everit to be postmaster at Union Springs, Cayuga County, N. Y., in place of Reuben F. Hoff, deceased.

Frank S. Kenyon to be postmaster at Adams, Jefferson County, N. Y., in place of Frank S. Kenyon. Incumbent's commission expires April 19, 1908.

Frank N. Lovejoy to be postmaster at Macedon, Wayne County, N. Y., in place of Charles H. Parker. Incumbent's commission expired March 24, 1908.

Conrad Metzger, jr., to be postmaster at Jeffersonville, Sullivan County, N. Y. Office became Presidential April 1, 1908.

NORTH DAKOTA.

W. H. Pray to be postmaster at Valley City, Barnes County, N. Dak., in place of Ellef K. Myhre. Incumbent's commission expired March 12, 1908.

OHIO.

William A. Campbell to be postmaster at Lima, Allen County, Ohio, in place of William A. Campbell. Incumbent's commission expired March 8, 1908.

Chandler W. Carroll to be postmaster at St. Clairsville, Belmont County, Ohio, in place of Chandler W. Carroll. Incumbent's commission expired December 17, 1907.

Sheridan G. Dowds to be postmaster at Mount Vernon, Knox County, Ohio, in place of George E. Canning. Incumbent's commission expired January 16, 1906.

Pearl W. Hickman to be postmaster at Nelsonville, Athens County, Ohio, in place of William P. Shepard, resigned.

W. J. Weirick to be postmaster at Loudonville, Ashland County, Ohio, in place of W. Sherman Hissem, resigned.

PENNSYLVANIA.

Daniel W. Bedea to be postmaster at Shenandoah, Schuylkill County, Pa., in place of Daniel W. Bedea. Incumbent's commission expired April 3, 1906.

John H. Brubaker to be postmaster at Elizabethtown, Lancaster County, Pa., in place of John H. Brubaker. Incumbent's commission expires April 19, 1908.

John F. Fenstermacher to be postmaster at Mount Joy, Lancaster County, Pa., in place of John F. Fenstermacher. Incumbent's commission expires April 27, 1908.

John H. Grove to be postmaster at New Freedom, York County, Pa. Office became Presidential April 1, 1908.

Caroline E. Hall to be postmaster at Swarthmore, Delaware County, Pa., in place of Edward W. Hannum. Incumbent's commission expired February 5, 1907.

Anne D. Moore to be postmaster at Avondale Chester County, Pa., in place of Anne D. Moore. Incumbent's commission expires April 27, 1908.

John Roland to be postmaster at New Holland, Lancaster County, Pa., in place of John Roland. Incumbent's commission expires April 27, 1908.

Charles A. Suesserott to be postmaster at Chambersburg, Franklin County, Pa., in place of David Maclay, deceased.

PORTO RICO.

Augusto Font to be postmaster at Aguadilla, Aguadilla County, P. R., in place of Augusto Font. Incumbent's commission expired November 17, 1907.

Alfredo Gimenez y Moreno to be postmaster at Bayamon, San Juan County, P. R. Office became Presidential January 1, 1908.

SOUTH CAROLINA.

James Marion Byrd to be postmaster at Branchville, Orangeburg County, S. C., in place of William H. Reedish, deceased.

TENNESSEE.

John W. Jackson to be postmaster at Columbia, Maury County, Tenn., in place of Archelaus M. Hughes, removed.

TEXAS.

John H. Carson to be postmaster at Dayton, Liberty County, Tex. Office became Presidential April 1, 1908.

Leland S. Howard to be postmaster at Roscoe, Nolan County, Tex. Office becaume Presidential April 1, 1908.

William B. Montgomery to be postmaster at Stanton, Martin County, Tex. Office became Presidential April 1, 1908.

UTAH.

Stephen W. Ross to be postmaster at Lehi, Utah County, Utah, in place of Stephen W. Ross. Incumbent's commission expires April 19, 1908.

WISCONSIN.

William Vanzile to be postmaster at Crandon, Forest County, Wis., in place of William Vanzile. Incumbent's commission expired April 5, 1908.

WYOMING.

Joseph L. Kidwell to be postmaster at Douglas, Converse County, Wyo., in place of James B. Wilson, resigned.

Joseph Munz to be postmaster at Saratoga, Carbon County, Wyo., in place of Andrew M. McAnally. Incumbent's commission expired April 12, 1908.

## CONFIRMATIONS.

*Executive nominations confirmed by the Senate April 17, 1908.*

PUBLIC PRINTER.

John S. Leech, of Illinois, to be Public Printer.

RECEIVER OF PUBLIC MONEYS.

Nazario V. Gallegos, of Tucumcari, N. Mex., to be receiver of public moneys at Tucumcari, N. Mex.

PROMOTIONS IN THE NAVY.

Lieut. Walter S. Turpin to be a lieutenant-commander in the Navy from the 30th day of January, 1908.

To be lieutenants (junior grade) in the Navy from the 3d day of February, 1908, upon the completion of three years' service in present grade:

Stephen C. Rowan,
Samuel M. Robinson,
Ernest Friedrick,
Lamar R. Leahy,
Harold R. Stark,
William Ancrum, and
Charles E. Smith.

To be lieutenants in the Navy from the 3d day of February, 1908, to fill vacancies existing in that grade on that date:

Stephen C. Rowan,
Samuel M. Robinson,
Ernest Friedrick,
Lamar R. Leahy,
Harold R. Stark,
William Ancrum, and
Charles E. Smith.

Assistant Naval Constructor Henry Williams to be a naval constructor in the Navy from the 4th day of April, 1908, upon the completion of four years' service in present grade.

APPOINTMENT IN THE NAVY.

William S. Shacklette to be a hospital steward on the retired list of the Navy with the rank and three-fourths the sea pay of a pharmacist, in accordance with the provisions of an act of Congress approved April 3, 1908.

POSTMASTERS.

COLORADO.

Preston Holbrook to be postmaster at Blackhawk, Gilpin County, Colo.

KANSAS.

W. A. Fleming to be postmaster at Summerfield, Marshall County, Kans.

William H. Smith to be postmaster at Colby, Thomas County, Kans.

MAINE.

Fred H. Atwood to be postmaster at Rumford (late Rumford Falls), Oxford County, Me.

NEBRASKA.

Thomas J. Taylor to be postmaster at Wilber, Saline County, Nebr.

NEW HAMPSHIRE.

Forrest W. Peavey to be postmaster at Wolfeboro (late Wolfboro), Carroll County, N. H.

## ARBITRATION WITH NORWAY.

The injunction of secrecy was removed April 17, 1908, from an arbitration convention between the United States and Norway, signed at Washington on April 4, 1908.

## ARBITRATION WITH PORTUGAL.

The injunction of secrecy was removed April 17, 1908, from an arbitration convention between the United States and Portugal, signed at Washington on April 6, 1908.

## EXTRADITION WITH SAN MARINO.

The injunction of secrecy was removed April 17, 1908, from a treaty for the mutual extradition of criminals between the United States and the Republic of San Marino, signed at Rome on January 10, 1906.

## RECOVERY OF CONTRACT DEBTS.

The injunction of secrecy was removed April 17, 1908, from a convention signed by the delegates of the United States to the Second International Peace Conference held at The Hague from June 15 to October 18, 1907, respecting the limitation of the employment of force for the recovery of contract debts.

## NEUTRAL POWERS IN NAVAL WAR.

The injunction of secrecy was removed April 17, 1908, from a convention adopted by the Second International Peace Conference held at The Hague from June 15 to October 18, 1907, concerning the rights and duties of neutral powers in naval war.

# HOUSE OF REPRESENTATIVES.

FRIDAY, *April 17, 1908.*

[*Continuation of the legislative day of Monday, April 6, 1908.*]

The recess having expired, the House, at 11.30 a. m., was called to order by the Speaker.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

The Chair announced the appointment of Mr. TAWNEY as conferee on the legislative, executive, and judicial appropriation bill, to take the place of Mr. Brick, deceased.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. WATKINS, for ten days, on account of important business.

DIPLOMATIC AND CONSULAR APPROPRIATION BILL.

The SPEAKER. The pending motion is that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 20345, the diplomatic and consular appropriation bill, pending which motion the gentleman from Iowa [Mr. COUSINS] moves that the House limit the general debate upon that bill to five hours. The question is on the latter motion of the gentleman from Iowa.

The question was taken, and on a division (demanded by Mr. WILLIAMS) there were—ayes 61, noes 30.

Mr. WILLIAMS. Mr. Speaker, I respectfully demand tellers.

Mr. PAYNE. Mr. Speaker, I make the point that that is dilatory.

The SPEAKER. The Chair sustains the point of order.

Mr. WILLIAMS. Then, Mr. Speaker, I demand the yeas and nays.

Mr. PAYNE. Mr. Speaker, in view of the vote, I make the point that no quorum is present.

The SPEAKER. The point of order is sustained. No quorum being present, the Doorkeeper will close the doors, the Sergeant-at-Arms will notify absentees, and the question will be taken on the motion of the gentleman from Iowa, to close debate on the diplomatic and consular appropriation bill in five hours. The Clerk will call the roll.

The question was taken, and there were—yeas 164, nays 102, answer "present" 16, not voting 105, as follows:

YEAS—164.

| | | | |
|---|---|---|---|
| Alexander, N. Y. | Crumpacker | Hale | Livingston |
| Allen | Currier | Hamilton, Mich. | Longworth |
| Andrus | Cushman | Harding | Loudenslager |
| Barclay | Dalzell | Harrison | Lovering |
| Bartholdt | Davidson | Haskins | Lowden |
| Bates | Davis, Minn. | Haugen | McCall |
| Beale, Pa. | Dawson | Hawley | McKinlay, Cal. |
| Bennet, N. Y. | Denby | Hayes | McKinley, Ill. |
| Bennett, Ky. | Diekema | Helm | McLachlan, Cal. |
| Birdsall | Draper | Higgins | McLaughlin, Mich. |
| Bonynge | Driscoll | Hill, Conn. | McMorran |
| Boyd | Durey | Hinshaw | Madden |
| Bradley | Dwight | Holliday | Madison |
| Burleigh | Ellis, Mo. | Howell, N. J. | Mann |
| Burton, Del. | Ellis, Oreg. | Howell, Utah | Marshall |
| Burton, Ohio. | Englebright | Howland | Moon, Pa. |
| Butler | Esch | Hubbard, Iowa | Morse |
| Calder | Fairchild | Hubbard, W. Va. | Mouser |
| Calderhead | Focht | Huff | Mudd |
| Campbell | Fordney | Hull, Iowa | Murdock |
| Capron | Foss | Jenkins | Murphy |
| Cary | Foster, Ind. | Jones, Wash. | Needham |
| Caulfield | Foulkrod | Keifer | Nelson |
| Chaney | French | Kennedy, Iowa | Norris |
| Chapman | Fuller | Kennedy, Ohio | Nye |
| Clark, Mo. | Gaines, W. Va. | Knapp | Parker, N. J. |
| Cocks, N. Y. | Gardner, Mass. | Knowland | Parker, S. Dak. |
| Cole | Gardner, Mich. | Küstermann | Parsons |
| Conner | Gardner, N. J. | Lafean | Payne |
| Cook, Colo. | Gilhams | Laning | Pearre |
| Cooper, Pa. | Gillett | Law | Perkins |
| Cooper, Wis. | Goebel | Lawrence | Porter |
| Cousins | Graff | Lindbergh | Pray |
| Crawford | Graham | Littlefield | Prince |